

# ANNUAL REPORT

## 2015/2016



OFFICE OF THE PENSION FUNDS ADJUDICATOR



# KEY FIGURES

COMPLAINTS RECEIVED **9 667**



TOTAL COMPLAINTS DISPOSED OF **9 970**



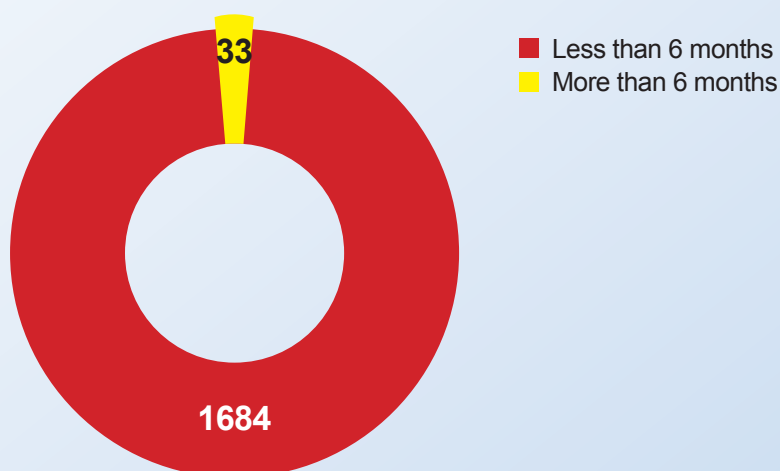
FORMAL DETERMINATIONS **3 476**



**83%** IN FAVOUR OF COMPLAINANTS

**78%** COMPLAINTS FINALISED WITHIN SIX MONTHS

COMPLAINTS CARRIED OVER TO 2016/7



# TABLE OF CONTENTS

Index	Page
Foreword by the Minister of Finance	3
Message from the Chairman of the Financial Services Board	4
Statement of responsibility and confirmation of accuracy for the Annual Report	5
Message from the Pension Funds Adjudicator	6
Operational Report 2015/16	7 - 15
Summary of Important Determinations	16 - 33
Corporate Governance	34 - 37
Annual Financial Statements	38 - 73
Performance Information	74 - 75

## VISION

*The Pension Funds Adjudicator is a specialist tribunal that aspires to be a respected institution that makes binding and final determinations in pension fund complaints submitted to it in terms of the ACT.*

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## MISSION

*The mission of the OPFA is to resolve complaints in terms of the ACT in order to uphold the integrity of the pension fund industry and to protect the interests of pension fund members.*

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## VALUES

- Professional and technical competence:
- Integrity
- Collaborate
- Stakeholder synergy
- Respect and dignity
- Impartially.







## FOREWORD

### BY THE MINISTER OF FINANCE



**Pravin J Gordhan, MP**  
Minister of Finance

If the health of the pension industry can be diagnosed by the number of complaints lodged with the Office of the Pension Funds Adjudicator (OPFA), then I believe there is need for some strong medicine to be administered. During the 2015/6 reporting period, 9 667 new complaints were received - an increase of 37.9% on the previous year.

Ms Muvhango Lukhaimane, the Pension Funds Adjudicator (PFA), has noted in her operational report that the spike in complaints is largely due to the interest created by publicity about Unclaimed Benefits and increased public awareness of the OPFA. Complaints show that too many members continue to experience low level of service from their funds, be it the infrequent or poor quality provision of benefit statements, weak explanations of fund information, delays in requests for transfer to other funds or inordinate delays in the payment of retirement and death benefits.

Funds must do more to increase their communication to active members about the OPFA. It is also disturbing to note an inordinate increase in the number of complaints lodged by tracing agents. Members must be better educated so that they lodge complaints directly with the OPFA at no cost, rather than fall prey to unscrupulous tracers, who charge for their services.

It is reassuring, however, that 9 970 complaints were finalised in the year under review, compared to 6 331 the previous year. This can be attributed to the OPFA finding ways to deal with complaints more efficiently while at the same time simplifying the wider customer journey. There were 3 475

determinations made - an increase of 20.74% year on year. It is still a cause for concern that at least 70% of the complaints relate to withdrawal benefits, pointing to inefficiencies in fund administration processes. This extends to the allocation and distribution of death benefits, responsible for the second highest number of complaints finalised.

The Twin Peaks model of financial sector regulation, currently being implemented, will go some way towards administering the 'medicine' needed to improve the health of the industry. It will further place dedicated focus on the fair treatment of all customers in the financial sector, including members of retirement funds. Much better customer outcomes will be demanded of the industry, with a strong market conduct regulator in place to ensure that these are achieved. The OPFA will continue to play a valuable role in customer protection, through resolving complaints, providing redress for individual consumers, and giving first-hand information on trends in poor treatment.

Government and a consumer-focused financial sector regulator should reinforce the consumer protection mandate of the OPFA by taking steps to strengthen awareness around member rights and ensure that their savings are prudently and diligently managed and explained, removing unnecessary administration and financial costs.

It is my firm expectation that all entities reporting to the Ministry of Finance will always enhance integrity, financial prudence and make every effort to expose and fight corruption and mismanagement of public funds.

I wish to thank Ms Lukhaimane and her team for their hard work and resilience in the face of many challenges. Adequate retirement savings require an active public, an engaged government, an industry that is fit for purpose, and fund members who are empowered to hold their pension fund and related service providers to account, including through channels such as the OPFA. I have no doubt that the OPFA will continue through on-going efforts to provide a clear, simple pathway to the speedy resolution of all pension complaints thereby contributing to the building of a fair and sustainable retirement system in South Africa.

**Pravin J Gordhan, MP**  
Minister of Finance

## MESSAGE FROM THE CHAIRMAN OF THE FINANCIAL SERVICES BOARD



**Abel Sithole**  
Chairman of FSB

Complaints continue to be directed at the Office of the Pension Funds Adjudicator (OPFA), indicating the respect the Tribunal enjoys as a beacon for those who wish to have their disputes with pension funds resolved.

However, a substantial increase in these complaints is due to poor governance and non-compliance with section 13A of the Pension Funds Act (ACT) which deals with payment of contributions, which is cause for great concern.

The Financial Services Board (FSB) has developed new processes to enforce compliance with section 13A. Cases involving employer non-compliance with section 13A will be referred to the enforcement committee. The South African Police Service has promised to provide assistance in prosecuting new offences under the ACT based on non-compliance by employers for their contribution liabilities to pension funds.

In the current reporting period, 9 970 complaints were finalised by the OPFA compared to 6 331 the previous year. It is more encouraging that this comes as a result of improved efficiencies, timeous monitoring and increased productivity.

The OPFA has reported that funds and administrators seldom provide complainants with written responses to their initial enquiries. Often the verbal information given to the complainant would materially differ from what is ultimately submitted to this Tribunal when they respond to the complaint. It is clear some funds do not treat customers fairly during all the stages of the product life-cycle and this dereliction of duty warrants closer

scrutiny. Many funds appear to be paying mere lip service to Treating Customers Fairly (TCF).

TCF is an outcomes-based regulatory and supervisory approach designed to ensure that specific, clearly articulated fairness outcomes for financial services consumers are delivered by regulated financial firms. One of the assurances of TCF is that customers will be provided with clear information and kept appropriately informed before, during and after acquisition of a financial product.

Of concern, is also the unreasonable delay in payment of benefits, especially by umbrella and industry funds - the majority of withdrawal benefits are being paid more than nine months after they become due. To make matters worse, funds and administrators often cite late submission of documentation as the reason for the delay - which needs attention.

However, it is also reassuring that the responses submitted by funds and administrators to the OPFA continue to improve, with parties providing as much information as possible at the first instance. This can only bode for speedier resolution of disputes.

I am pleased that the OPFA will be focusing attention on the activities of tracing agents. Too many complaints were ruled out of jurisdiction only because they were lodged by tracers who craved complaints from members of the public, in the mistaken belief that they might be entitled to a retirement benefit. Often, only the bare minimum information was provided with the request for the Tribunal to investigate.

To reduce the incidence of tracers preying on unsuspecting members previously employed in the mining industry, persons formerly employed in factories that have long shut down and potential beneficiaries of deceased persons, with promises of unclaimed benefits, there must be better education of former members of retirement funds and beneficiaries to help them better understand whether a benefit might be due to them or not.

The OPFA continues to operate effectively – of 1 717 complaints that were carried over to the 2016/7 financial year, only 1.92% of these were older than six months.

The efficiency of the Tribunal is a manifestation of the improved focus on organisational development interventions aimed at supporting a high performance environment, especially at operational level. This was supplemented with continuous ethics training.

I thank Ms Muvhango Lukhaimane, the Pension Funds Adjudicator and her team for steering the OPFA in another successful year in fulfilling its mandate.



Abel Sithole  
Chairman of the FSB

# STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF ACCURACY FOR THE ANNUAL REPORT

for the year ended 31 March 2016

To the best of my knowledge and belief, I confirm the following:

All information and amounts disclosed in the annual report are consistent with the annual financial statements audited by the Auditor General.

The annual report is complete, accurate and is free from any omissions.

The annual report has been prepared in accordance with the guidelines on the annual report as issued by National Treasury.

The Annual Financial Statements have been prepared in accordance with South African Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

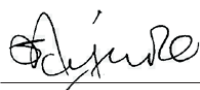
The accounting authority is responsible for the preparation of the annual financial statements and for the judgments made in this information.

The accounting authority is responsible for establishing, and implementing a system of internal control designed to provide reasonable assurance as to the integrity and reliability of the performance information, the human resources information and the annual financial statements.

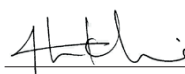
The external auditors are engaged to express an independent opinion on the annual financial statements.

In our opinion, the annual report fairly reflects the operations, the performance information, the human resources information and the financial affairs of the entity for the financial year ended 31 March 2016.

Yours faithfully



**Mr AM Sithole**  
Chairperson



**Ms MA Lukhaimane**  
Pension Funds Adjudicator

30 July 2016



## MESSAGE FROM THE PENSION FUNDS ADJUDICATOR



**Muvhango Lukhaimane**  
Pension Funds Adjudicator

South Africa has a robust retirement industry that is thriving and is now worth an estimated R3 trillion.

The health of retirement funds in South Africa soars ahead of its neighbours, which face great obstacles, such as underdeveloped financial markets, poor literacy levels, ineffective administration and low per capita income.

Traditionally seen as a benefit for “good and faithful” employees, a pension enables them to enjoy their retirement or to provide for their dependants in the event of premature death or disablement.

In 1956, South Africa was the first country to have a comprehensive act to regulate retirement funds. Legislation in the form of the Pension Funds Act (PFA) formalised the pension funds industry.

While South Africa has been a pioneer in the field of pension funds legislation, sadly the high number of complaints received by the Office of the Pension Funds Adjudicator (OPFA) points to a lack of service excellence and voluntary compliance on the part of funds.

The OPFA exists with a very important core mandate and that is to ensure that the ordinary worker has an accessible, free dispute resolution platform to turn to in the event of any perceived or real threat to his or her retirement savings.

The OPFA continues to determine a high percentage of valid complaints. Of the 3 476 formal determinations in the current reporting period, 83% were reliefs in favour of the complainant whilst 17% were dismissals.

As in prior years, complaints relating to withdrawal benefits - especially delays in the payment of benefits and disputes over the quantum of benefits - represented almost 70% of all complaints finalised. It is clear that inefficient administration processes are often the cause of delay in the payment of benefits, especially resignation benefits.

It is encouraging that the stakeholder outreach programme embarked upon by the OPFA to create awareness about the Tribunal as well as to inform the public about unclaimed benefits, contributed to the 9 667 new complaints being received - an increase of 37.9% on the previous year,

An unwelcome development, however, has been the excessive increase in the number of complaints lodged by tracers who claim a fee. This, despite the fact that funds are required in terms of the Act to inform members of the existence of this Tribunal and that the service that is provided is free. Funds are, therefore, requested to increase their communication about the existence of the OPFA and to publicise unclaimed benefits.

Employees are the mainstay of an organisation's success. The OPFA places high value on the wellness of its employees, especially those in the backroom who process complaints and cases.

I am pleased that the high performance environment has benefitted from the improved focus on organisational development interventions. The elimination of historical anomalies related to remuneration practices to ensure adherence to “equal pay for equal work” principle, will go a long way towards nurturing a happy workplace.

I must thank the Board of the Financial Services Board (FSB), which serves as the accounting authority for the OPFA, for its continued provision of strategic leadership and direction on human resources matters, risk management, financial management, substantive reporting, accountability and good governance; the Public Entity's Oversight Unit at the National Treasury for their support and guidance with the strategic planning and reporting process; and colleagues within the FSB's ICT and Finance departments. Gratitude is also extended to the Ministry of Finance for its support and interest in the OPFA achieving its mandate.

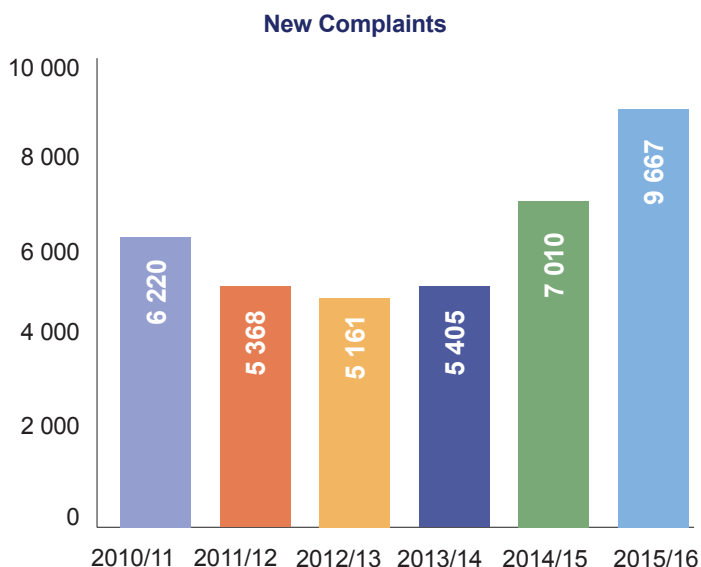
Finally, I must also record my appreciation to my management team and staff who have been a tower of strength in assisting me to deliver on the important mandate within the custody of the OPFA; the media who have fairly reported on the many determinations issued but more so helped educate the South African consumer where such education was sorely needed; and significantly, the ordinary fund member for whom this office exists.

A handwritten signature in black ink, appearing to read 'M. Lukhaimane', written over a horizontal line.

**Muvhango Lukhaimane**  
Pension Funds Adjudicator

## OPERATIONAL REPORT

9 667 new complaints were received during the year, an increase of 37.9% on the previous year, 2014/5. The increase is largely due to the interest sparked by the communication over Unclaimed Benefits and increased awareness of the office by the members of the public.



The communication over Unclaimed Benefits has also resulted in an inordinate increase in the number of complaints lodged by tracers. This is an unwelcome development as funds are required in terms of the Act to inform members of the existence of this Tribunal and the fact that the service that is provided is free. It is noted as an unwelcome development as members of

the public are required to pay a fee to the tracer, whilst the latter has no knowledge of whether a benefit exists for that person or not.

Funds are therefore, requested to increase their communication to active members on the existence of the office and where there are Unclaimed Benefits to publicise their tracing efforts so that members of the public do not fall prey to unscrupulous operators that have no business within the pension funds industry. The OPFA had to take a decision to stop taking enquiries from tracers and indicating to them that the complainants should lodge the complaints directly with the office and provide the minimum information required to investigate (most of the complaints were one-pagers without the minimum information required to commence an investigation).

Whereas the increased number of complaints points to increased awareness of the OPFA, it is also disheartening as the causes for complaints are mainly due to poor governance, non-compliance with section 13A of the Act and laxity in the performance of administrative duties by the fund administrators e.g. timeous processing of claims, issuing of benefit statements, etc.

The bulk of our complaints were received from Gauteng and Eastern Cape provinces, with KwaZulu-Natal a distant third. Although the picture has remained the same from the previous year, the Eastern Cape has seen an exponential increase in the number of complaints lodged.

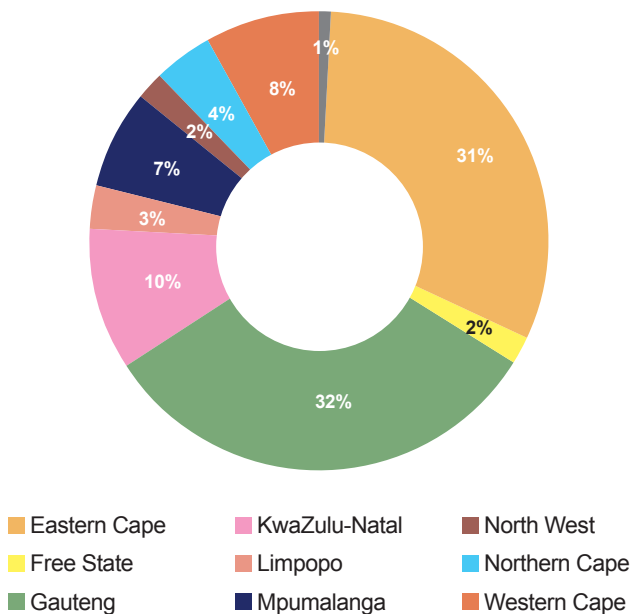


### MANCO

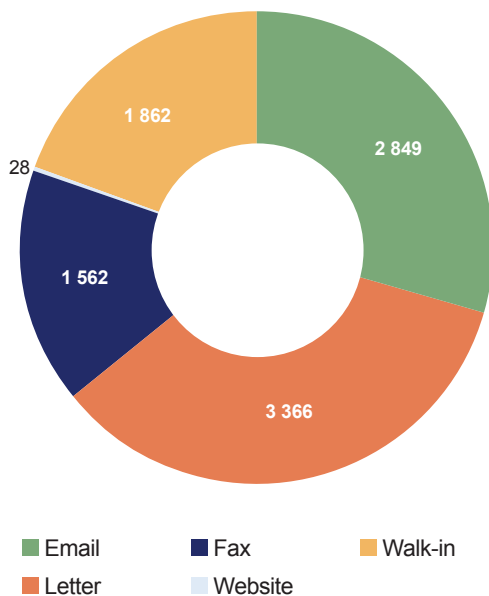
From left to right:

Richard Segers; Muvhango Lukhaimane; Silas Mothupi; Charlson Raphadana; Wilana Groenewald; Christian Seabela

### Geographical area of residence



Given that this office is located in Pretoria, it is imperative that it monitors the mode frequently used by complainants to lodge their complaints. This assists in assessing the accessibility of the office especially as a large number of complainants are historically disadvantaged individuals. In this regard, as illustrated below, complainants mostly rely on the Post Office, followed by electronic mail, walk-ins, facsimile and the OPFA website.



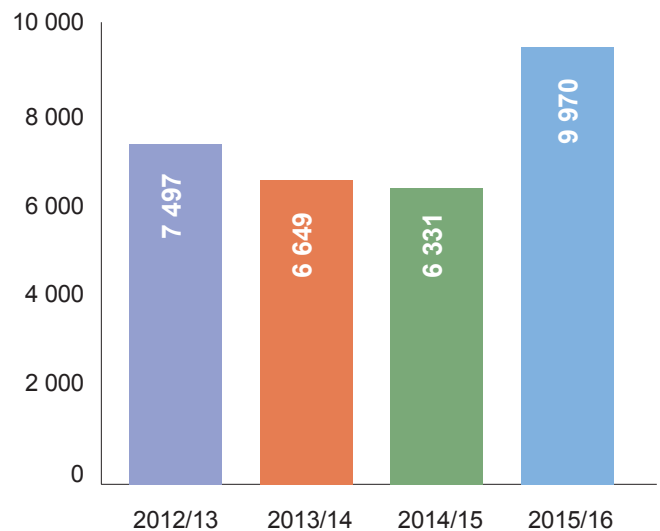
Further to this, the office processed 33 866 pieces of mail through the Post Office compared with 20 680 pieces of mail the previous year. This illustrates the reliance of the office on the Post Office, which has sometimes proved to be a source of inefficiency owing to its many labour disruptions. This in turn impacts on our turnaround times especially where additional documentation or written confirmation is required.

### CALL IN ENQUIRIES

A total of 8 610 call in enquiries were handled as opposed to 17 514 for the previous year. Of these enquiries, only 2 480 were related to follow-ups on determinations compared to 5 249 in the previous financial year. The decline of more than 50% in these statistics is testament to the improved turnaround times.

9 970 complaints were finalised, compared to 6 331 the year before. This is attributable to improved efficiencies, timeous monitoring and increased productivity. Responses submitted by funds and administrators continue to improve with parties providing as much information as possible at the first instance. The initial letters requesting responses were amended to provide more guidance on what information is required for certain categories of complaints.

### Total complaints finalised

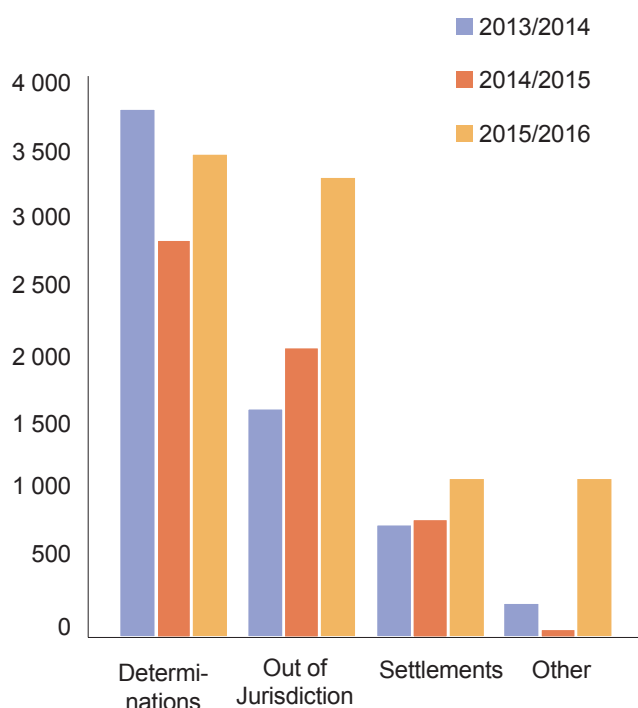




## OPERATIONAL REPORT, CONTINUED

It continues to be of concern that although complainants take quite some time before approaching this Tribunal with their complaints, funds and administrators seldom provide complainants with written responses to their initial enquiries. In most instances, the verbal information that the complainant would have from the fund or administrator would materially differ with what they ultimately submit to this Tribunal upon being presented with the complaint.

The 9 970 complaints were finalised as follows: 3 476 determinations, an increase of 20.74% from the year before; 3 438 complaints finalised as out of jurisdiction, an increase of 42.2% from the year before; 1 544 Settlements, an increase of 54.4% from the prior year, through conciliation 3 complaints were settled and 1 509 complaints categorised as other (these may be withdrawals, abandoned matters, etc.).



There has been a notable increase in the number of matters settled without requiring formal determinations. These are mainly related to instances where a delayed payment would be made only after a complaint is forwarded to the fund by this Tribunal, information is provided to the satisfaction of this Tribunal that the complainant's affairs are in order and also where a complaint was lodged owing to the complainant's misunderstanding of a provision of the rules or calculation of a benefit, which is ultimately cleared by the fund or administrator. The bulk of complaints indicate that funds pay benefits for anything from three months to six years after the date on which the benefit became due, with the bulk of withdrawal benefits being paid more than six months after they become due. Funds and administrators would often cite late submission of

exit documentation which is largely proven not to be the case. The inefficient and lacklustre approach to benefit payments is prevalent in umbrella funds and industry funds where employees are far removed from the administration of a fund.

The number of matters deemed as out of jurisdiction and the bulk of complaints categorised as 'Other' were lodged by tracers that solicited complaints from members of the public who believed that they might be entitled to a retirement benefit. These complaints did not have the required minimum information for this Tribunal to investigate any further despite repeated requests to the parties to provide the information. Examples of the minimum information would be; name of fund, name of employer, date of membership, date of termination of membership and proof of membership of a fund in the form of a payslip or benefit statement. This was largely precipitated by the not so coordinated release of information and public statements on unclaimed benefits from different stakeholders ranging from retirement funds to the Registrar of Pension Funds.

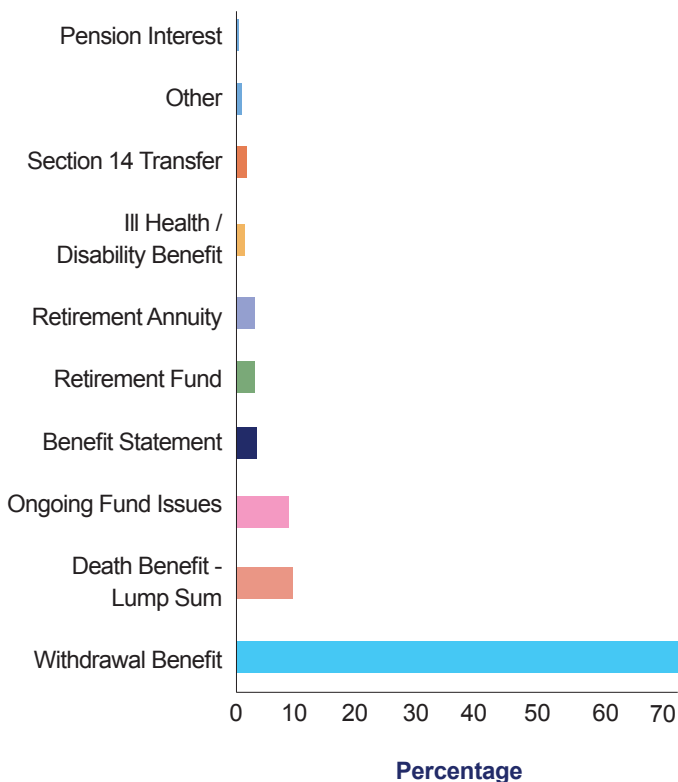
Whilst the OPFA appreciated the need to constantly inform the public about Unclaimed Benefits being held by retirement funds, this should be done with the necessary caution and provision of guidelines to allow former members of retirement funds and beneficiaries to relatively deduce whether a benefit might be due to them or not. The tracers in this instance preyed on unsuspecting former members, persons previously employed in the mining industry, persons previously employed in factories that have long shut down and potential beneficiaries of such deceased persons with promises of unclaimed benefits; whereas they were reasonably aware they there were no such benefits owing to the insufficient information that they had to start off with.

Matters deemed out of jurisdiction owing to the partial liquidation of funds were also significant. Most umbrella funds are quick to partially liquidate the participation of an employer within the fund rather than follow the section 13A enforcement process to collect outstanding contributions from delinquent employers. It should be noted that where a fund is in liquidation, this Tribunal has no jurisdiction as section 28 of the Act makes it the responsibility of the Registrar and the appointed liquidator to oversee the affairs of the fund. Closely linked with the fund initiated liquidations, was the number of instances that were out of jurisdiction owing to business rescue proceedings being underway. Similarly, the jurisdiction of this Tribunal is excluded by section 133 of the Companies Act No. 71 of 2008 which shields entities under business rescue from enforcement proceedings.

The OPFA still determines a high percentage of valid complaints. As far as the 3 476 formal determinations were concerned 83% were reliefs whilst 17% were dismissals. As in prior years, complaints relating to withdrawal benefits (delay in

payment of benefits, quantum of benefits) represented almost 70% of all complaints finalised. Inefficient administration processes often lead to delay in payment of benefits, especially resignation benefits. Comparatively speaking, umbrella funds fare better with the processing of benefits than the former bargaining council funds and funds within the local government sphere.

**Nature of benefits on Complaints Closed**



Most of the complaints relating to quantum of benefits are often as a result of outstanding contributions, i.e. failure to adhere to the provisions of section 13A of the Act by employers who do not remit both member and employer contributions timeously and failure of retirement funds to ensure that the monitoring person in terms of the Act reports such non-compliance to the Financial Services Board (FSB) so that the necessary steps can be taken to ensure compliance. Umbrella funds are quick to request the termination of the participation of defaulting employers from funds thereby triggering partial liquidations. The Registrar unfortunately willingly grants these requests.

The Private Security Sector Provident Fund (PSSPF) accounts for 1 387 of these determinations handed down in this period, a staggering 39.9%. The situation with the governance and operations of the PSSPF has repeatedly been brought to the attention of the FSB, without any improvement. To date, this Tribunal remains unaware of any action that has been taken either against the board of management of the PSSPF or the

administrator Absa Consultants and Actuaries (Pty) Ltd for glaring transgressions such as: failure to allocate contributions timeously, failure to pay out benefits when due, incorrect information given to members regarding the status of their claims or fulfilment of employer duties, failure to issue benefit statements, failure to investigate death benefits timeously etc. This is non-compliance with the most basic duties of a board of management and an administrator. This failure is illustrated by the fact that of the 1 387 determinations issued in respect of the PSSPF, complainants were granted relief in 1 385 of these complaints and only two were dismissals. 46 other complaints were deemed to be out of jurisdiction, mostly owing to prescription and 104 matters were settled (other complaints were carried over from the prior year).

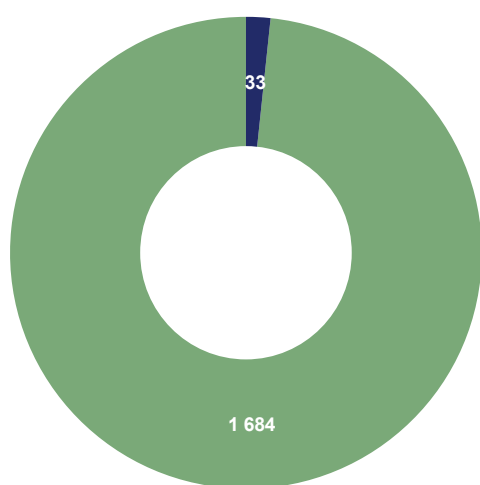
Complaints relating to delays in the transfer of fund benefits from one fund to another in terms of section 14 of the Act were also notable. Union aligned funds and administrator sponsored funds are habitual offenders in relation to this. This can anecdotally be ascribed to the desire not to lose business stemming from administration and consulting fees. One fund where procedural issues have managed to frustrate members wishing to transfer and participating employers is the Chemical Industries National Provident Fund (CINPF); an instance where fund rules inadvertently usurped the powers of the Registrar and went far beyond what the Act intended in terms of confirming the equitable share and satisfying the benefit expectations of the member. This matter has been reported to the Registrar of Pension Funds for intervention as the offending provision in the rules will remain valid unless amended by the board of CINPF or the Registrar.

The allocation and distribution of death benefits remain the second highest number of complaints finalised. In this financial year, the complaints mostly related to unreasonable delays in the finalisation of the section 37C investigation owing to the dilatory conduct of the boards of management of funds. This Tribunal cannot overly stress the importance of finalising section 37C investigations within the allocated period of twelve months. Delays in the allocation and distribution of death benefits lead to untold suffering on the part of dependants and beneficiaries who would have submitted all documents required on time.

A total of 2 302 determinations were filed at the various High courts as follows: 2 183 (Gauteng Local Division), 35 (North Gauteng High Court), 72 (Western Cape High Court), 4 (KwaZulu Natal High Court), 5 (Port Elizabeth High Court), 2 (Eastern Cape High Court) and 1 in the Thohoyandou High Court. Again, the Registrars of these High Court divisions ensured that matters are filed timeously so as to facilitate enforcement where necessary.

1 717 complaints were carried over to the next financial year 2016/7. Only 1.92% of these were older than six months.

Active Complaints as at 31 March 2016

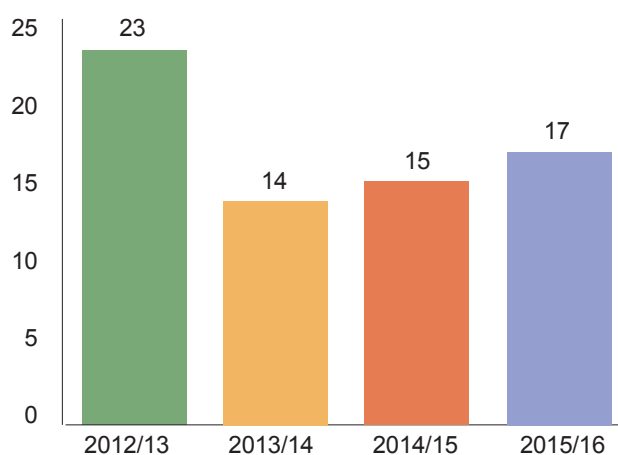


■ Less than 6 months ■ More than 6 months

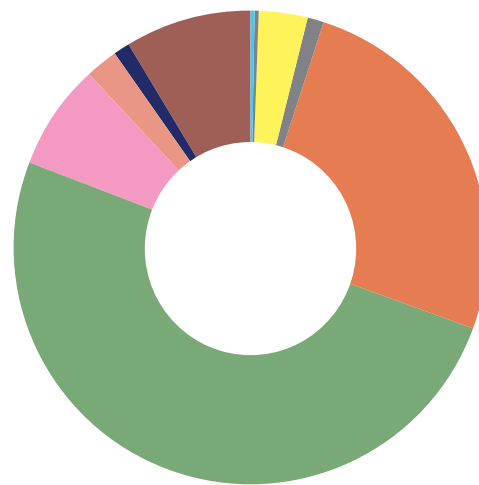
## SECTION 30P APPEALS

A total of 17 appeals were lodged against determinations in terms of section 30P of the Act. 11 were lodged by complainants and 6 lodged by respondents (funds/administrators or employers).

Section 30P Appeals



Complaints referred to other entities



■ Banking Ombudsman ■ GEPF  
 ■ CCMA ■ Long-Term Ombudsman  
 ■ Department of Labour ■ Post Office  
 ■ FAIS ■ SARS  
 ■ FSB ■ Transnet

Entities		
Banking Ombudsman	3	0.4%
CCMA	2	0.3%
Department of Labour	24	3.2%
FAIS	9	1.2%
FSB	190	25.5%
GEPF	375	50.3%
Long-Term Ombudsman	55	7.4%
Post Office	15	2%
SARS	9	1.2%
Transnet	63	8.5%
<b>Total</b>	<b>745</b>	<b>100%</b>



## OPERATIONAL REPORT, CONTINUED

Of the 745 complaints referred to other entities, 375 were referred to the Government Employees Pension Fund (GEPF) whilst 190 were referred to the FSB. The nature of complaints referred to the GEPF was of such concern that GEPF management was engaged and advised to communicate extensively with their members around the Taxation Laws Amendment Act of 2015, especially in the run-up to T-Day, i.e. 1 March 2016. A significant number of these complaints were from GEPF members that had terminated their service and transferred their benefits to either retirement annuities or preservation funds only to discover that they cannot access the benefit in the former prior to reaching age 55 or that they are only entitled to a once off withdrawal limited to an amount permissible in terms of the GEPF Law, in the latter. Whilst it was not always possible to reverse these transactions, in other instances, with the intervention of this Tribunal, it was possible to persuade the GEPF to reverse the transaction and implement a different choice for the complainant where it was evident that the complainant had misunderstood the transaction or had been misled by a less-than-honest financial advisor. Some of these matters were also referred to the Ombud for Financial Services Providers to investigate the actions of financial advisors.

This Tribunal has no jurisdiction over GEPF complaints and therefore its intervention is often limited to ensuring that a complaint referred to GEPF by it is handled timeously and all information pertaining to such complaints is forwarded.

Most of the 190 complaints referred to the FSB dealt with section 15B surplus which the OPFA has no jurisdiction over and Unclaimed Benefits that would have prescribed for purposes of this Tribunal where there was sufficient information to indicate that a retirement fund might still be holding a benefit for a former member.

As far as referrals to other financial services Ombuds are concerned, only 67 complaints were referred to three other offices. This indicated that complainants are aware of the mandate of this Tribunal, which awareness may partly be attributed to the stakeholder management interventions that included roadshows\* in 5 Provinces during the financial year (\*see more information under Stakeholder Management below).

### STAKEHOLDER MANAGEMENT

As complaints to the OPFA continue to increase and public awareness of the office and its mandate increase, it is imperative that key stakeholders are engaged regularly to facilitate the complaints resolution process.

Meetings were held with the following stakeholders to expedite the complaints management process: NBC Fund Administration Services, the Bridging Provident Fund, Batho Retirement Advisors, Old Mutual, Eskom Pension and Provident Fund, Momentum Retirement Fund Administrators, Sanlam Developing Markets Limited and the Road Freight and Logistics Industry Provident Fund.

The Adjudicator attended to the following networking engagements: Launch of the Annual Report for the Ombudsman for Banking Services, Launch of the Annual Report for the Short-Term Insurance Ombudsman, Financial Planning Institute: VIP Gala Dinner, the Old Mutual Great Partnerships Gala Dinner, Discovery Executive Lunch, and a networking lunch hosted by Swiss Re Life and Health Africa Limited.

The Adjudicator held meetings with the Principal Officer of the Road Freight and Logistics Industry Provident Fund, Liberty Life Limited, MMI Group Limited, Swiss Re Life and Health Africa Limited, the Principal Officer of the Corporate Selection Umbrella Funds, the Financial Planning Institute of South Africa and executive management of NBC Fund Administration Services to discuss issues relating to the filing of responses and the quality of such responses. She also held a meeting with the administrator of the GEPF to streamline the complaint referral system and highlight trends in GEPF complaints.

In June 2015 the office was visited by five delegates from the Retirement Benefits Authority in Kenya to learn more about our complaints' processes. The Ombudsman for Financial Services in Swaziland visited the office in January 2016 for a similar fact-finding exercise.

The Adjudicator addressed the Batseta Winter Conference, the Institute of Retirement Funds of Africa Annual Conference, the Chemical Industry National Provident Fund Trustee Conference, FSB Consumer Education Familiarisation Programme, Nkonki Audit Committee Conference on Retirement Funds, the INFO 2015 Conference and the Pension Lawyers Association Conference. She also attended to the following interviews: radio interviews with Classic FM, Lotus FM, Power FM, Phalaphala FM and an interview with the Sowetan.

In September 2015, Senior Assistant Adjudicators, Mr Raphadana and Ms Dooka presented at a workshop for the Natal Joint Municipal Pension Fund.

The stakeholder engagement team held two roadshows in each of the following provinces: August 2015 in Gauteng, September 2015 in Mpumalanga, October 2015 in Eastern Cape, November 2015 in KwaZulu-Natal and February 2016 in Cape Town.

## IMPLEMENTATION OF TREATING CUSTOMERS FAIRLY (TCF)

The OPFA participates in the Market Conduct Regulatory Framework Steering Committee, which holds quarterly meetings at the Financial Services Board. The committee functions as a stakeholder consultation forum between the FSB (as regulator), the National Treasury (as policymaker) and the stakeholders represented by the Steering Committee members, in relation to the development and implementation of a market conduct legislative and regulatory framework. Little progress has been achieved by the committee as most issues are still at a developmental stage.

This Tribunal receives a number of complaints that allows us to gauge the implementation of some of the six TCF outcomes. The complaints relate to failure by funds to provide members with sufficient and clear information that will enable them to make informed choices when acquiring financial products, post-sale barriers related to when a member wants to transfer his/her retirement annuity to another financial institution or take early retirement and levying of penalties (causal event charges) on the fund value. Most retirement funds fail to comply with the following TCF outcomes:

- Outcome 3: Customers are given clear information and are kept appropriately informed before, during and after the time of contracting; and
- Outcome 6: Customers do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.

This Tribunal notes with concern the weaknesses in regulations in the retirement sector when viewed in light of the above-mentioned TCF principles. This Tribunal therefore eagerly awaits the implementation of the Retail Distribution Review proposals to compel retirement funds to disclose a lot more information upfront and be transparent with all changes. It is quite unfortunate that the retirement fund industry often responds to being forced by legislation to “do the right thing” other than just “good business sense” that achieves an equitable and fair result between companies/retirement funds and clients/members.

## HUMAN RESOURCES

The OPFA continuously improves on its monitoring and evaluation of employee performance, placing emphasis on early detection of poor work performance in order to implement the necessary intervention in time. Twelve employees terminated their employment of which only two were regrettable.

## Reasons for staff leaving

Reason	Number	% of total no. staff leaving
Resignation	9	75%
Dismissal	1	8.3%
Other (mutual separation agreement / internship contract expired)	2	16.7%
<b>Total</b>	<b>12</b>	<b>100%</b>

Over the year, there was improved focus on organisational development interventions ranging from training and development to culture interventions in order to support a high performance environment, especially at operational level. This was supplemented with continuous ethics training to reinforce the desired behaviours required to support the organisation to achieve its mandate. The OPFA also holds its staff accountable to the standards of ethical behaviour as set out in its Code of Conduct. All staff receive annual training of the prescribed ethical standards and compliance thereto forms part of the standard reportable agenda items to the Board's Risk committee.

All human resources policies were reviewed with more emphasis placed on talent management and provision of a flexible working environment, especially for professional staff. The historical anomalies related to remuneration practices have now been dealt with to ensure internal parity and adherence to “equal pay for equal work” principle. Remuneration was also adjusted to ensure that the OPFA remains competitive and can attract and retain critical skills.

Emphasis was placed on staff development, with employees encouraged to further their studies. Bursaries were extended to three employees. Employees were also granted the opportunity to attend workshops and seminars in the following areas; legal drafting, business writing skills, trustee training, MS Office, Risk & Compliance, Pension Interest on divorce, Occupational Health and Safety and Introduction to the Pension Funds Act.

## Training Costs

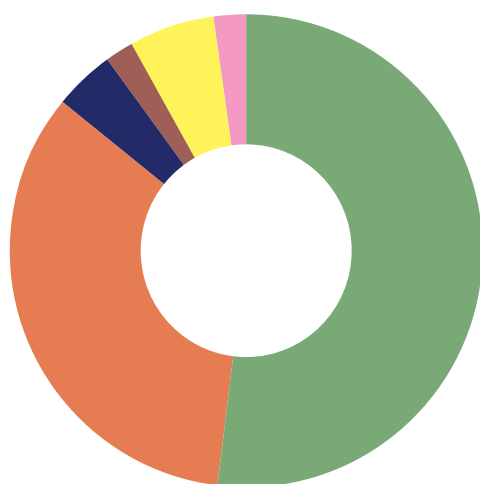
Objective	Training Expenditure (R)	No. of employees trained	Avg Training cost per employee (R)
Legal Studies	R 24 920.00	4	R 6 230.00
Other Skills Training	R 160 157.00	52	R 3 079.94

## OPERATIONAL REPORT, CONTINUED

Employee wellness continued to be prioritised, with employees encouraged to partake in reasonable/moderate physical exercise. Together with the contracted wellness service provider, employees were kept informed on living healthy lifestyles and the importance of mental wellbeing. All these actions were aimed at encouraging employees to develop and maintain work-life balance; and proactively manage stress, whether personal or work-related.

### Employment Equity

Population Group	Female		Male	
African	26	52%	17	34%
Coloured	2	4%	0	0%
Indian	1	2%	0	0%
White	3	6%	1	2%
Foreign	0	0%	0	0%
<b>Total</b>	<b>32</b>	<b>64%</b>	<b>18</b>	<b>36%</b>



■ African Female  
■ African Male  
■ Coloured Female  
■ Indian Female  
■ White Female  
■ White Male

### Representation at management levels

	Executive management	Senior and middle management
Levels	Female	Male
African	1	3
Coloured	0	0
Indian	0	0

### INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

The OPFA launched its new website during the year, to enhance communication with its external stakeholders. The site also provides complainants with an opportunity to lodge complaints online. Members of the public may also learn more about our determinations with an easy to access search functionality. An intranet portal was also launched with the aim of improving the entity's Document Management System and internal communication.

With the ever increasing cyber threats along with its continued technology maturity, additional security over the entity's systems were advanced through a more robust firewall and the commencement of encryption of information and mobile devices. In line with the office's Business Continuity Programme, Email archiving and Folder redirection were successfully implemented during the year.

Over the last three years the OPFA ICT programme has come a long way to raising its maturity level and will continue to do so going forward to ensure systems are developed and improved in line with its strategic priorities to better serve its employees and stakeholders by delivering on its mandate.





#### **SUPPORT**

**Standing (from left to right):** Wonder Dila; Gomotsegang Magaseng; Tintswalo Shibambu; Sylvia Arendse; Malakia Raedani.  
**Seated (from left to right):** Duma Lubando; Kurhula Masinge; Jacky Tshabalala



#### **ADJUDICATION**

**From Left to Right:** Carmen Kotshoba; Tinyiko Shihundla; Muvhango Lukhaimane

# SUMMARY OF IMPORTANT DETERMINATIONS

## Introduction

One of the advantages of a specialist tribunal such as the Office of the Pension Funds Adjudicator (OPFA) is that parties can be rest assured that there is a repository of specialist pensions law knowledge that understands the nuances of the retirement funds industry. It is this knowledge that enables the tribunal to resolve disputes in an expeditious and economical manner, whilst at the same time adhering to the rule of law. Below follows a selection of determinations by Pension Funds Adjudicator, Muvhango Lukhaimane which settled important areas of the law around pension funds administration during the year under review.

## FAILURE TO MAKE PAYMENTS

### EMPLOYER FAILED TO MAKE PAYMENTS TO FUND

The Private Security Sector Provident Fund continued to be embroiled in disputes that came before the Office of the Pension Funds Adjudicator.

One such complaint received by the Pension Funds Adjudicator, Muvhango Lukhaimane was from TW Masina who claimed his employer Crime Stop Pretoria CC (second respondent) had failed to pay over contributions and submit schedules to Private Security Sector Provident Fund (first respondent).

The complainant commenced employment with the second respondent from 1 October 2003 to date. He was a member of the first respondent by virtue of his employment. The first respondent was administered by Absa Consultants & Actuaries (Pty) Ltd ("ACA").

It appeared that although the second respondent deducted provident fund contributions from the complainant's salary, it did not remit all payments to the first respondent. The complainant provided this Tribunal with a copy of his payslip for 15 January 2014 reflecting a deduction for provident fund contribution purposes in the amount of R220.35 from his salary.

The complainant submitted that upon contacting the first respondent with respect to the status of his retirement benefits, he was informed that the second respondent did not appear on its records.

He further stated that the second respondent merged with another entity known as MCS Security in 2010 and since then provident fund deductions were made from his salary. However, it appeared that the second respondent did not remit payments to the first respondent.

The complainant submitted that he did not have proof that his employment commenced in 2004 and confirmed that his employment commenced in October 2003 as submitted by the second respondent.

The first respondent submitted that according to its records, the second respondent registered as a participating employer on 1 November 2002 and was non-compliant in terms of section 13A of the Act. Contributions were received up to April 2015 and allocated up to June 2011.

The first respondent further indicated that the complainant was enrolled as its member from May 2008 and has a fund credit of R21 776.95, representing contributions received on his behalf for the period May 2008 to July 2008, October 2008 to July 2010, September 2010 and December 2010 to September 2014. It attached the complainant's transactional history report showing details of contributions made on his behalf.

It submitted that ACA required claim documentation in order to process the complainant's withdrawal benefit.

The second respondent submitted that the complainant had been in its employ since October 2003 and he was enrolled as a member of the first respondent from February 2005. The second respondent further attached a certificate of compliance for December 2014, ostensibly from the first respondent whose validity was for the period 15 January 2015 to 15 February 2015, indicating that the second respondent had submitted membership schedules in respect of the payments made.

In her determination, Ms Lukhaimane said the rules of a fund were supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund.

Rule 3 of the first respondent's rules dealing with the membership of a fund provides that all employers in the private security sector shall participate in the fund with effect from the commencement of the fund or the commencement of the employer's business in the private security sector, whichever is the later.

On the other hand, at the time of the complainant's employment, the rules of the first respondent contained a provision defining Fund Qualification Service as follows: ".... a qualifying period of 6 months continuous permanent employment with any of



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

the employers within the private security sector, including any periods of probation, immediately prior to joining the fund.”

According to the information obtained from the Companies and Intellectual Property Commission (“CIPC”) on 1 October 2015, the second respondent was registered with CIPC on 12 November 2002 and was in deregistration.

However, upon contacting the office of the second respondent, its official confirmed that it was still in business and, therefore, this Tribunal accepts that the second respondent was still in business.

The commencement date of the first respondent was 1 September 2002. The first respondent confirmed that the second respondent joined it as a participating employer on 1 November 2002. In the circumstance, the second respondent timeously registered as a participating employer with the first respondent.

The complainant commenced his employment with the second respondent on 1 October 2003. Prior to 1 September 2009, the *fund qualification service* provision as set out above required an employee to have been in service for a period of six continuous months of permanent employment with an employer within the private security sector, prior to the deduction of provident fund contributions.

Therefore, the second respondent ought to have enrolled the complainant as a member of the first respondent by April 2004 in terms of the membership qualification rule applicable at the time.

“The second respondent submitted that the complainant was enrolled as a member of the first respondent in February 2005. It is important to note that the second respondent did not provide any contribution schedules nor proof of payment on behalf of the complainant from February 2005 except the compliance certificate issued by the first respondent for the period 15 January 2015 to 15 February 2015.

“On the other hand, the first respondent confirmed that the complainant was enrolled as its member from May 2008 and provided the complainant’s contribution history as proof thereof and thus, the second respondent is non-compliant with Rule 3.2 of the former’s rules.

“The second respondent has a duty placed on it by the provisions of section 13A(1)(a) of the Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment was being made, and the first respondent in turn had a duty to pay out benefits to the members.

“The first respondent submitted that the complainant has a fund credit of R21 776.95, representing contributions received on his behalf for the period May 2008 to July 2008, October 2008 to July 2010, September 2010 and December 2010 to September 2014.

“Considering the rules of the first respondent and the period of the complainant’s employment, the period during which the second respondent failed to pay contributions in respect of the complainant is April 2004 to April 2008, August 2008 to September 2008, August 2010, October 2010 to November 2010 and October 2014 to date.

“In the circumstance, the second respondent is non-compliant in terms of the provisions of Rule 4 of the first respondent.”

Ms Lukhaimane said it also appeared from the first respondent’s response that the first respondent had not finalised the allocation of contributions as it only made allocations up to June 2011, although contributions were received up to April 2015.

“This Tribunal notes with concern the practice of the first respondent’s administrator, ACA, of not allocating contributions received from employers. The first respondent appointed ACA as its administrator and delegated all its administration duties to the latter.

“ACA, in turn, was expected to perform these duties as contemplated in section 13B(5) of the Act. However, ACA failed to perform these statutory duties towards the first respondent which in turn affected members of the first respondent. The first respondent must allocate contributions received in order to establish whether there are further missing contributions due by the second respondent.”

The second respondent was ordered to register the complainant as a member of the first respondent from April 2004, within two weeks of this determination;

The first respondent was ordered to finalise the process of allocating contributions received from the second respondent up to April 2015.

The second respondent was ordered to submit all outstanding contribution schedules for the period April 2004 to April 2008, August 2008 to September 2008, August 2010, October 2010 to November 2010 and October 2014 to date, in order to facilitate the computation of the complainant’s outstanding contributions, within three weeks of this determination;



### SENIOR ASSISTANT ADJUDICATORS

**From Left to Right:** Yolande Van Tonder; Natasha Maryhe; Mfundo Daki; Tshepo Dooka – Ramped.

The first respondent was ordered to compute the complainant's outstanding contributions, together with late payment interest owed by the second respondent.

The second respondent was ordered to pay all the complainant's arrear contributions together with late payment interest.

### WITHHOLDING OF A BENEFIT

#### EMPLOYER CANNOT RECOVER MONEY WITHOUT COMPENSATION ORDER

An employer who wishes to recover stolen monies from an employee's benefit must apply for a compensation order.

It is only when an employer is in possession of such an order, deemed to be a civil judgement, that a fund may deduct a member's benefit and pay to such an employer.

This was the ruling by the Pension Funds Adjudicator, Muvhango Lukhaimane, in a matter in which S Ndumiso complained that he had not been paid his withdrawal benefit because his former employer Ascension Trading cc T/A Ascension Motors (second respondent) had put in a claim against the benefit with the Auto Workers Provident Fund (first respondent).

The complainant's employment was terminated by the second respondent on 10 October 2014 following allegations of theft of money. The second respondent filed a criminal case of theft against the complainant and also requested the first respondent to withhold the complainant's withdrawal benefit pending the finalisation of the criminal trial. When the criminal trial was completed, the complainant was subsequently convicted of theft and granted a suspended sentence of three years.

In March 2015, the complainant applied for the payment of his withdrawal benefit and was informed to wait for a period of three months. When he followed up, he was informed that the second respondent had also laid a claim on his pension money.

The first respondent confirmed that the second respondent approached it to withhold the complainant's benefit pending the finalisation of the criminal case. It submitted that having regard to the sentence handed down, it requested the second respondent to confirm that it had received a judgement for the payment of the amount of R21 300 which it claimed had been stolen. The second respondent failed to submit a judgement indicating that it should be paid the said amount.

The first respondent said that it informed the second respondent that failure to produce the judgement providing for compensation would result in it paying the complainant his withdrawal benefit.



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

In her ruling, Ms Lukhaimane said that in terms of the Pension Funds Act, “a registered fund may deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of.....compensation in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member”.

However, she said there was no evidence that the second respondent had applied for an order in terms of section 300 of the Criminal Procedure Act, 55 of 1977 (“CPA”) which provides relief for a party that suffered patrimonial loss to be compensated for the loss.

Thus, the second respondent was required to make an application before a Magistrate’s Court requesting for a compensation order stipulating that an amount R21 300 should be paid to it in terms in terms of section 300(1) and (2) of CPA.

“It is only when an employer who is in possession of such an order, deemed to be a civil judgement, that a fund may deduct a member’s benefit and pay to such an employer in terms of section 37D of the Act.

“In the current matter there is no order in terms of section 300 of CPA granted to the second respondent.

“In the event, this Tribunal finds that the first respondent cannot make a deduction from the complainant’s withdrawal benefit for purposes of paying it to the second respondent. As a result, the first respondent should pay the complainant his withdrawal benefit,” Ms Lukhaimane ruled.

### QUANTUM OF WITHDRAWAL BENEFIT

#### PFA ORDERS FUND TO PAY BALANCE OF MEMBERS’ BENEFITS

A provident fund which paid only half of benefits due because it had invested in companies that went broke has been ordered by the Pension Funds Adjudicator to pay the balance with interest.

MJ Makhaye who had been employed by the Msunduzi Municipality (third respondent) from 1971 until June 2014 complained to Pension Funds Adjudicator, Muvhango Lukhaimane that Pietermaritzburg Corporation Provident Fund (first respondent), administered by AON South Africa (Pty) Ltd (second respondent), paid him only R170 352.91 on 23 October 2014 after his services were terminated.

He said he had contacted the first respondent on numerous occasions but nobody could give him an answer on the funds due to him.

Ms BS Madlala complained that she received only R517 514.70 from the first respondent following the death of her husband TM Madlala who had also worked for the third respondent.

She too said she could not get a satisfactory response from the first respondent.

In response to both complaints, the first respondent’s broker submitted that its board resolved to pay 50% of funds because the first respondent’s funds were invested into a company called CMM which was under curatorship. The first respondent’s funds were also invested into a company called Sharemax which went into liquidation.

The broker also said financials for the first respondent had not been prepared since 2006. Also, in 2008 there was a resolution signed by the employer to increase contributions from 5% to 12% and this has not yet been implemented.

The broker stated that due to the abovementioned reasons, the FSB had recommended that claims be paid at 50% until such time that the financial affairs of the first respondent were brought to order.

In her determination, Ms Lukhaimane said rules of a fund were supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund.

She said Section 7C(2) of the Pension Funds Act dealing with the statutory duties of trustees states that a fund’s board shall “take all reasonable steps to ensure that the interests of members in terms of the rules of the fund are protected at all times”.

The board shall also have “a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as a fiduciary duty to the fund, to ensure that the fund is financially sound and is responsibly managed and governed”.

“This Tribunal notes with concern the first respondent’s failure to take reasonable steps to ensure that the interests of its members are protected at all times as it is one of the duties of its board in terms of section 7C(2) of the Act.

“The resolution to pay 50% of the benefits to exiting members is not in the best interests of the first respondent’s members.

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

"From both the submissions provided by the FSB, this is an indication that the first respondent failed to ensure that proper records are kept and that adequate and appropriate information is communicated to members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of its rules as required in terms of section 7D(1)(a) and (c) of the Act.

"The board of the first respondent also failed to act with due care and diligence in dealing with the property of the first respondent."

With regard to the first respondent's submission that in 2008 there was a resolution signed by the employer to increase contributions from 5% to 12% and that this had not been implemented, Ms Lukhaimane said the first respondent must apply the rules that were applicable at the time of accrual of the benefit.

"The first respondent cannot use the non-implementation of a resolution signed by the employer to increase contributions from 5% to 12% as an excuse not to pay the complainant's full retirement benefit," she said.

Ms Lukhaimane ordered the first respondent to pay both complainants the outstanding retirement benefits plus fund growth.

The board of the first respondent was ordered to submit a plan to the Registrar of Pensions on how it aims to proceed regarding the payment of full benefits to members and a comprehensive report on whether the investments in CMM and Sharemax were prudent and compliant with the Regulations.

The first respondent was also ordered to provide a report on its non-compliance with Section 15 of the Act regarding the submission of financial statements and to establish the level of its data accuracy in respect of the complainant.

### DEATH BENEFIT

#### PFA SETS ASIDE LIFE PARTNER'S DEATH BENEFIT

The Pension Funds Adjudicator has set aside a R3 082 000 death benefit allocated to a deceased's partner of 22 months after one of his children complained that the decision was not fair and equitable.

Muvhango Lukhaimane ordered the board of Momentum Provident Preservation Fund (first respondent) to re-exercise its discretion in terms of Section 37C of the Pension Funds Act.

Ms Lukhaimane said the board of the first respondent had failed to consider relevant factors and ignored relevant ones in allocating the death benefit in the manner it did.

"This alludes to inadequate investigation of each dependant's personal circumstances, an unacceptable fettering of discretion and ignoring of relevant factors," she said.

The complainant who is also a beneficiary said that at the time of his father's death on 3 October 2014, his father was a member of the first respondent, administered by MMI Group Limited (second respondent).

Following the deceased's demise, a death benefit in the amount of R6 828 086 became available for distribution to the deceased's beneficiaries and dependants. The death benefit was allocated and distributed as follows: life partner R3 082 000; major son (complainant) R882 000.00; major son R882 000 and minor daughter R1 982 086.

The complainant submitted that a few weeks before the deceased's demise, his will was discussed with his friend who is a lawyer and he emphasised that he did not want his will to be changed and that his assets be equally distributed amongst his children, in the event that he passed away.

He submitted that at the time of his demise, the deceased had lived with his partner for 22 months. He was aggrieved with the fact that she was awarded a greater share of the death benefit and accused the partner of not having presented the first respondent with accurate information.

He averred that the partner was awarded 40% of the death benefit, which was not in accordance with the deceased's will and wishes and contradicted the verbal arrangement he had with her to the fact that she would only need about R200 000 from the death benefit, down from her initial proposal of R600 000.

The complainant claimed the board of the first respondent blindly followed a particular formula without having gathered enough facts to support its decision. He contended that the board did not give sufficient weight to the fact that the other dependants were the deceased's children and not someone who he knew for a relatively short period of time and to whom he had not shown the commitment of marriage.

He stated it was brought to his attention that one of the issues considered by the board was that the deceased's partner earned an amount of R42 000 per annum and indicated that she resigned from her employment.

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

He found it odd that the mere fact that the partner lived with the deceased entitled her to be awarded a 40% share of the death benefit as she had very little wealth when she met the deceased. He disputed that the deceased planned to spend the rest of his life with the partner as he had never mentioned a desire to that effect.

He further stated that the deceased supported his partner to ensure his own comfort and even lent her some funds to start a business. He averred the partner was permanently employed, did not pay for accommodation and was pursuing her business and had more disposable income.

He lamented that the board of the first respondent did not perform due diligence in verifying information supplied by the partner. The board had failed to gather information from his mother with respect to costs associated with the deceased's maintenance of his minor daughter.

The complainant requested that the Office of the Pension Funds Adjudicator set aside the board's decision and the share of the death benefit allocated to the deceased's partner be reduced to 10%.

In its response, the second respondent stated that the partner was regarded the same as a spouse for purposes of the distribution. She was financially dependent on the deceased.

It submitted that the board was required to apply its discretion when allocating benefits to dependants. It was, therefore, not a pure mathematical formula the board followed, but rather, a discretionary decision coupled with some calculations taking into account current financial needs and future earnings capacity.

In her determination, Ms Lukhaimane said based on the evidence, there appeared to be no doubt that the deceased and his partner lived together and shared a household and had an emotional and intimate bond.

"It is imperative to note that the complainant, in his own version, indicated that the deceased lent some money to his partner to open a business, which is viewed by this Tribunal as an indication that both parties had a good inter-dependent relationship.

"In this regard, this Tribunal is convinced that the board of the first respondent acted correctly in identifying and considering the partner as a permanent life partner of the deceased who qualifies as a legal dependant of the deceased and eventually allocating a share of the death benefit to her.

"Therefore, the partner was correctly identified as a spouse for the purposes of section 37C of the Act.



### ASSISTANT ADJUDICATORS

**From Left to Right:** Malesela Molefe; Urisha Maharaj; Busisiwe Tjale; Steven Kwinda (Jnr Ass Adj).

**ABSENT:** Carla van Preen



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

"In this circumstance, the complainant's view that the partner should not have been considered or at least receive a smaller portion of the death benefit, is misplaced," said Ms Lukhaimane.

However, she added, that the deceased's children, including the complainant, were also the legal dependants of the deceased and as such, they were correctly identified as the dependants of the deceased and allocated portions of the death benefit.

Ms Lukhaimane said it was imperative to bring to the complainant's attention that in matters relating to the distribution of death benefits, the deceased's will, though an important factor, was not a primary determinant of whether or not the partner should have been considered for allocation of the death benefit.

She said from the papers before her, it appeared that the board of the first respondent ignored relevant factors during the distribution phase, in particular, as regards the most probable likelihood that the children of the deceased, including the complainant, did not have an automatic entitlement to be paid by the Liberty Life Retirement Annuity Fund in terms of percentages mentioned in the beneficiary nomination form.

This Tribunal also noted that the board of the first respondent initially resolved to allocate an amount of R2 315 836 to the partner and subsequently changed its decision and allocated an amount of R3 082 000 to her and reduced the amounts allocated to the deceased's children.

Ms Lukhaimane said the payment made to the partner on top of what had been determined to be the extent of her dependency on the deceased, which had the effect of reducing the initial allocations made to the deceased's children who were mentioned in the will, was unreasonable and an improper exercise of a discretion vested in the board.

"It is imperative, therefore, that where there are other beneficiaries, dependency be limited to provable expenses and not gratuitous payments," Ms Lukhaimane said, finding that the board had improperly or unduly exercised its discretion in its decision.

### FUND NAILED FOR NOT ASCERTAINING BENEFICIARIES' LEVEL OF DEPENDENCY

A retirement fund has been rapped for paying out a death benefit relying only on affidavits without seeking proof of levels of dependency of the deceased.

The Pension Funds Adjudicator, Muvhango Lukhaimane has ordered Bidvest South Africa Retirement Fund (first

respondent) to re-investigate the payment of the death benefit to the deceased's two brothers.

The deceased's girlfriend (complainant) said that the deceased who was employed by Voltex (Pty) Ltd and his mother had both died in a motor accident on 7 April 2013. The deceased's mother and five-year old daughter were his only nominated beneficiaries. The complainant is the child's mother.

She said on 1 August 2014, the board resolved to allocate the death benefit in the amount of R317 736.76 as follows: two brothers of the deceased R47 660.51 (15%) each; the complainant 0%; and the minor daughter R222 415.73 (70 %).

The complainant asserted that because the deceased's mother had passed away, his daughter should be his only beneficiary.

She said she informed the board of management of the first respondent and the human resources department of the employer that the deceased's daughter was his only dependant and not his brothers. However, the board decided to allocate part of the death benefit to the deceased's brothers.

She had informed the first respondent that the deceased's one brother was a self-employed businessman who was involved in the television entertainment business and the other brother was an attorney. However, the first respondent failed to investigate the information provided. She submitted that the deceased's daughter was prejudiced by the first respondent's failure to conduct proper investigations.

The complaint was also unhappy that she did not have a choice of the trust account for the placement of the minor child's portion of the death benefit.

The first respondent further submitted that the board determined who will receive a benefit and in what portions, using the principles of reasonableness, fairness and equity. The board may identify the following persons to receive benefits:

- Legal dependants – those dependants such as a spouse and children whom the deceased had a legal duty to support.
- Factual dependants – those whom the deceased supported financially but did not have a legal duty to support.
- Nominees – those persons whom the deceased nominated on his beneficiary nomination form to receive a benefit. The beneficiary nomination form is used as a guide only and is not binding on the first respondent.



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

It added that the board may not favour legal dependants over factual dependants based on biological relations. Based on the information provided, the board identified the deceased's brothers as factual dependants at the time of his death.

The first respondent said the deceased's brothers confirmed in sworn affidavits that they were partially financially dependent on the deceased at the time of his death. However, they failed to furnish proof of the level of their dependency on the deceased.

While the board did not have any source other than the affidavits to rely on, there were no contrary findings or information to suggest that the brothers were not dependent on the deceased. No objections were raised by the complainant or any interested party until January 2015.

The first respondent further submitted that the complainant did not inform the first respondent of the deceased's brothers' alleged employment prior to the board allocating and paying the benefit. The complainant first raised the objection to the distribution in January 2015, long after the investigations were completed and payment made.

The board conducted investigations and paid the allocated benefits on 6 August 2014. When the board made its decision, it was satisfied that the deceased's brothers were unemployed

and were partially dependent on the deceased based on the information provided to the board of management.

On the question of the complainant's unhappiness of where the minor child's benefit had been paid, the first respondent said the board was granted discretion when distributing benefits.

The first respondent had required the complainant to indicate whether she would prefer for the benefit to be placed in a beneficiary fund and to receive a monthly income in respect of the minor child. She indicated "yes" on the affidavit. She also indicated that she did not have any knowledge of investments.

Taking into account the complainant's election and the fact that she did not have investment knowledge, the child's benefit was placed in the Alexander Forbes Beneficiary Fund.

In her determination, Ms Lukhaimane said Section 37C of the Act governs the disposition of death benefits.

It placed a duty on the board of management to identify the beneficiaries of a deceased member and also vested the board with discretionary powers on the proportions and manner of distributing the proceeds of a death benefit.

As with the exercise of any discretionary power, in effecting an equitable distribution the board is required to give proper



### ADMIN ASSISTANTS

**Standing (from left to right):** Thuli Mogwale; Vuyiswa Mangeni; Lerato Mokoena; Khutso Mafokwane; Siphokazi Cetyana.

**Seated (from left to right):** Sibongile Mbatha; Kgomotso Matsi; Busisiwe Dhlamini.

**ABSENT:** Nthabiseng Maleka

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED



### CASE OFFICERS

**Standing (from left to right):** Karabo Masekela; Neo Mashigo; Nomlindo Mpongo; Nthabiseng Mabalane; Mashudu Matovheke.  
**Seated (from left to right):** Nthule Shaku; Caswell Ritshuri.

consideration to relevant factors and exclude irrelevant ones from consideration. The board of management may not unduly fetter its discretion by following a rigid policy that takes no account of the personal circumstances of each beneficiary and of the prevailing situation.

She said the complainant submitted that she informed the board of management of the first respondent and the human resources department of the employer that the deceased's daughter was his only dependant and not his brothers. However, the board decided to allocate part of the death benefit to the deceased's brothers.

She said the complainant had submitted that she informed the first respondent about the brothers' employment status. However, the first respondent failed to investigate the information provided.

The board of first respondent relied on the affidavits submitted by the deceased's brothers who had failed to furnish proof of their dependency on the deceased.

"This Tribunal is of the view that the board did not have any source other than the affidavits to rely on.

"However, it proceeded with the allocation of the death benefit based on the affidavits received and in the absence of any proof of their levels of dependency on the deceased. The first respondent's conduct is quite derelict to the prejudice of the minor child.

"The complainant submitted that she raised the issue of the deceased's brothers with the first respondent. However, the mere reliance on the affidavits means that the board of the first respondent only established dependency and not the level thereof, which is crucial when dealing with multiple beneficiaries in order to ensure equity, otherwise the decision is arbitrary as it is not based on factual information.

"Therefore, it is clear that the first respondent did not conduct a proper investigation in terms of section 37C of the Act."

Ms Lukhaimane also said it was a common law right for a guardian to administer the financial affairs of the minor child.

She said the complainant should be allowed to select the beneficiary fund especially in this instance where a beneficiary fund chosen is linked to the administrator.

"The business interest of the second respondent cannot be said to be independent of the decision made.

"The board of management of the first respondent has decided on the mode of payment of the death benefit. However, it cannot force its preferred service provider on the complainant. "Over time, the Registrar of Pension Funds has to look into these arrangements where fund administrators conduct other ancillary businesses that by default provide other services to the funds they administer. Therefore, the complainant should



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

have the right to decide on which beneficiary fund the funds due to the minor child should be invested.”

Ms Lukhaimane ordered the decision of the board of the first respondent to be set aside and for the first respondent to re-investigate the allocation of the death benefit in respect of the deceased’s brothers.

The board of the first respondent was also ordered to re-allocate the death benefit in terms of section 37C of the Act taking into consideration the factors raised in this determination.

### **PFA ORDERS DEATH BENEFIT PAYMENT DESPITE TIME BARRING OF COMPLAINT**

The Pension Funds Adjudicator has ordered the Mineworkers Provident Fund to investigate and pay a death benefit although a complaint was time barred as it was received out of the prescribed time limit.

DA Olehile complained to the OPFA that the Mineworkers Provident Fund (respondent) had failed to allocate and distribute a death benefit in the amount of R135 285.07 following the death of her husband on 23 November 2001.

The complainant said she needed the money to support her children - aged 19 and 17 - born from her relationship with the deceased.

The respondent submitted it was almost 14 years since the deceased had passed away and although the complainant said she claimed the death benefit in 2004, there were no records to prove that she lodged a claim before the expiry of the prescribed three-year minimum period permitted in terms of the Act, in order for her complaint to be investigated.

However, due to the potential success in the claim, the respondent said it would not rely on the late submission period as a reason not to investigate and pay the death benefit.

The respondent said that upon receipt of the complaint, it carried out a detailed investigation and discovered that certain documents were outstanding and delaying the process of finalising the claim. The respondent also submitted that it required confirmation whether or not the deceased was maintaining his mother.

In her determination, Ms Lukhaimane said the respondent’s stance to accommodate the claim after the prescribed three-year minimum period was “commendable” as it helped reduce the amount of unclaimed benefits held by retirement funds.



### **NEW COMPLAINTS UNIT**

**Standing (from left to right):** Dolly Sibanda; Pamela Mpofu; Evah Mokwape; Madumetja Mogale.

**Seated (from left to right):** Bathabisile Khumalo; Tonny Kedikilwe.

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

However, she said the board had 12 months to identify the dependants of the deceased and allocate and pay a death benefit.

“The respondent submitted that it does not have record of this claim. However, the respondent should be aware of the death of the deceased as he was its member. “Therefore, the board failed to investigate the matter in terms of the section 37C of the Act. She added that more than 14 years had passed with the respondent not having completed its investigation.

“The respondent failed to provide a satisfactory explanation as to the delay in the investigation. As a result of the respondent’s dilatory conduct, the deceased’s beneficiaries suffered prejudice in that they have potentially been denied access to benefits which may have become available to them had the investigation been completed.

Ms Lukhaimane ordered the respondent to complete its investigation and proceed with the allocation and distribution of the death benefit.

### PENSION FUND ACCUSED OF TARDY CONDUCT

Yet another pension fund has been rapped on the knuckles by the Pension Funds Adjudicator for its tardy conduct which has resulted in a death benefit remaining unpaid for seven years.

Ms BM Dibakwana (complainant) asserted she had submitted all the relevant documents to the Mineworkers Provident Fund (respondent).

However, the respondent had ceased its investigation until it received the complaint, claiming it had not received the relevant documents.

Mr B Malatsi (the deceased) was a member of the respondent by virtue of his employment with Tavistock Colliery. He passed away on 13 October 2008. The complainant was the spouse of the deceased.

Upon the death of the deceased, a death benefit became available for distribution between the beneficiaries of the deceased. However, the respondent failed to allocate and distribute the death benefit. The death benefit as at 9 March 2016, was in the amount of R224 745.42.

The complainant submitted that she was living with the deceased from 1999 until he passed away. She submitted that he had four children of whom two had passed away. The deceased was employed with the employer from 1999 until the date of his death. Further, he was a member of the respondent.

She further submitted that she has been communicating with the respondent since the death of the deceased in respect of the payment of the death benefit, to no avail. She said she had provided the respondent with all the required death claim documents.

The complainant submitted that she has two children to support.

In its response, the respondent submitted that it was still awaiting from the complainant, the following documents: the MW16 form; copy of the complainant’s ID and bank statement; copy of the ID of the family witness; and the nomination form from the employer. Upon receipt of the above documents, the case will be processed and payment will be made to the beneficiaries.

In her determination, Ms Lukhaimane said that Section 37C of the Pension Funds Act places a duty on the board of management to identify the beneficiaries of a deceased member and make payment of the benefit within 12 months of the death of the member.

She said that the board of the respondent had failed to investigate the matter within the prescribed period in terms of the Act.

“The deceased passed away on 13 October 2008. More than seven years have passed and the respondent has not completed its investigation.

“The complainant submitted that she has provided the respondent with all the required death claim documents. However, the respondent had ceased its investigation until it received this complaint.

“As a result of the respondent’s dilatory conduct, the deceased’s beneficiaries suffered prejudice in that they have potentially been denied access to benefits which may have become available to them had the investigation been completed,” Ms Lukhaimane said.

She said she also found it odd that the complainant would approach her office if indeed the respondent had carried out its duties in terms of the Act.

“The respondent should source the beneficiary nomination form directly from the employer and clarify with the complainant, which family witnesses’ ID copies are required.

“It is the duty of the respondent to gather all the information. The respondent should travel to the complainant in order to obtain all the required documents. However, any costs incurred in finalising his claim cannot be defrayed from the death benefit.”



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

Ms Lukhaimane ordered the board to complete its investigation and consider the relevant factors for an equitable distribution of death benefits to the deceased's beneficiaries, within nine weeks from the date of the determination.

### SECTION 14 TRANSFER

#### FUND MUST AMEND RULES TO ALLOW FOR SECTION 14 TRANSFER

The registration of a "binding" rule by the Registrar of Pension Funds is leading to undue prejudice to members of a pension fund seeking to transfer out.

Hence, representations must be made to the Registrar to consider amending the rule to allow for members to transfer from one fund to another, said Pension Funds Adjudicator, Muvhango Lukhaimane.

GP de Klerk brought a complaint before the Office of the Pension Funds Adjudicator against Chemical Industries National Provident Fund (first respondent), NBC Fund Administrators (Pty) Ltd (second respondent) and Aspen Pharmacare (third respondent).

The matter concerned a Section 14 transfer of the complainant's fund benefit from the first respondent to the Aspen Provident Fund. The second respondent submitted a response on behalf of the first respondent and stated that transfers out of the first respondent are regulated by Rule 10.2 of the rules of the first respondent.

In terms of section 13 of the Act, the Rules of a fund are binding on it, its members, shareholders and officers. Any act which the board may implement outside the ambit of the rules is ultra vires and thus null and void.

The second respondent submitted that the request for the transfer of a provident fund benefit in terms of Section 14 of the Act must be presented to the board through the complainant's Local Advisory Committee. Subsequent to receiving the request, the board must investigate same by conducting a comprehensive communication with the members concerned. The board must ensure that the transfer is reasonable and equitable and that it accords full recognition of the rights and reasonable expectations of the members.

The mere fact that a member and employer communicate the intention to transfer to another fund does not compel the board to lodge a section 14 application with the Registrar. The board has to comply with the Rules of the first respondent first.

The second respondent further submitted that the application of Rule 10.2 was tested by the High Court in Chemical

Industries National Provident Fund v Sasol Limited, Sasol Pension Fund, SACWU National Provident Fund and Sasol Negotiated Pension Fund, case number 22869/2013 ("the Sasol case").

The findings of the aforementioned case were confirmed by the SCA on 7 September 2015 in Sasol Limited v Chemical Industries National Provident Fund (20162/2014) [2015] ZACSA 113 ("Sasol appeal case"), where it was held that the board of a fund is bound to observe and implement the Rules of the fund. Its powers and responsibilities and the rights and obligations of members and participating employers are governed by the Rules, applicable legislation and the common law.

Ultimately the process prescribed by Rules 10.2.1, 10.2.2 and 10.2.3 must be followed prior to a section 14 application being lodged with the Registrar in terms of Rule 10.2.4. Further, paragraph 2.3 of Directive PF 6 provides that the board must ensure that a transfer of members to another fund will be reasonable and equitable. Thus, the first respondent is not dealing with the requirements of section 14 yet, as the provisions of Rules 10.2.1, 10.2.2 and 10.2.3 have to be complied with first.

The second respondent submitted that it only received a formal request for a section 14 transfer on behalf of the complainant and other affected members on 12 March 2013. Following receipt thereof and upon the board's instruction, the matter was discussed at the relevant structures of the first respondent, including the Regional Advisory Committee established in the Eastern Cape Region in terms of the Rules of the first respondent to assist the board to deal with the matters affecting the first respondent in that region. The outcome of the meeting was discussed at the subsequent board meetings.

The second respondent further submitted that after discussing the matter in detail, the board took a concerted view that the letters signed by the complainant and other affected members were suspicious in that it appeared the decision was not independently taken as 98% of letters appeared to have been drafted by the same person. The structure, font and contents thereof, as well as the reasons for wanting to transfer out of the first respondent were found to be identical. The main reasons set out relate to outstanding home loan balances, as well as unequal contribution rates paid by the employer. The board resolved in terms of Rule 10.2.2, that the matter should be investigated in order to determine whether the complainant and other affected members have made an independent and informed decision. The board requested the second respondent to assist in this regard. The second respondent visited the third respondent approximately three times: August 2013, November 2013 and March 2014.

During the first visit, the procedure for transferring members out of the first respondent, as set out in the Rules of the first

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

respondent, was clearly explained by the second respondent to the employees of the third respondent.

During the second and third visits, the affected members were interviewed. During the visits the following was clearly evident:-

- The third respondent was contributing 100% to the Aspen Provident Fund, whereas members and the third respondent were required to contribute to the first respondent. This resulted in the net remuneration of the Aspen Provident Fund members, being higher than that of the first respondent's members.
- The members were led to believe that their housing loan balances would automatically be settled in the event of a section 14 transfer. Members' complained that their housing loan balances did not reduce despite making monthly repayments. Members took further loans prior to settling their initial loans.
- Members were made to believe that the investments in the Aspen Provident Fund were performing better than the first respondent's investment. However, a benefit comparison exercised as required in terms of Directive 6 was never conducted.

The second respondent further submitted that detailed feedback was provided to the board at a meeting held on 27 and 28 March 2014. The board resolved that due to the serious nature of the reasons provided for the transfer, this matter should be further investigated and the request would be processed upon finalising the investigations on condition that the board is satisfied with the findings thereof.

The second respondent submitted that the matter was further discussed at the board meeting held on 4 and 5 December 2014. The response of the Principal Officer of the Aspen Provident fund dated 17 June 2014 was also discussed at this meeting. After intensive deliberations, the board resolved that the information requested from the Aspen Provident Fund was not provided in full, particularly with regards to the performance of the Aspen Provident Fund over a five-year period. This information was requested from the latter and had still not been provided.

The second respondent submitted that by the time of the next board meeting on 25 and 26 June 2015, it had been made aware of a determination of this Tribunal dated 26 May 2015, wherein the latter made determinations based on the very same factual circumstances that contradict the provisions for Rules 10.2.1, 10.2.2 and 10.2.3.

The SCA ruling dated 7 September 2015, was still outstanding at that stage. The board resolved to invite the Registrar and the Adjudicator to their next board meeting. At the next board meeting held on 27 and 28 August 2015, the board was

addressed by the Registrar about the relevant determination that were in conflict with the Rules of the first respondent and the findings of the Sasol case.

Therefore, the board has been dealing with this matter since it was brought to its attention. The board is bound by the Rules of the first respondent and its responsibilities set out in section 7C(2) of the Act to ensure that the members have made an independent and informed decision and that they will not be worse off after the proposed transfer.

The information requested from the Aspen Provident Fund is pivotal in assisting the board in this regard. The first respondent is currently not legally entitled to transfer the complainant's fund credit from the first respondent to the Aspen Provident Fund. The transfer will only be effected after conclusion of the investigation being undertaken by the board.

In her determination, Ms Lukhaimane said numerous determinations indicating this problem of inability to transfer from one fund to another were referred to the Registrar, requesting urgent intervention as this conduct amounted to maladministration.

"However, the situation remains as is. It is clear from the Sasol appeal matter that Rules of the first respondent should be complied with.

"The board of the first respondent is engaging in actions that are resulting in unnecessary delays to the applications. Therefore, the complainant and the third respondent should appeal to the Appeal Board of the Financial Services Board as the Registrar has clearly registered a Rule that is unreasonably untenable, vague and ambiguous in violation of the Act.

"The numerous referrals were intended for the Registrar to remedy the situation by either deregistering the rule or requiring the board of the first respondent to publish or cause to be published such detailed processes and procedures that would result in participating employers and members being aware of all requirements instead of being left to the mercy of the first respondent's board.

"Therefore, the complainant should make representations to the Registrar to have Rule 10 of the Rules of the first respondent amended. Whereas the board of the first respondent requested this Tribunal to attend its board meeting on 27 and 28 August 2015, to discuss its determinations in related matters, in light of the Sasol ruling, this Tribunal, unlike the Registrar cannot engage in such interaction as it might amount to undue influence.

"The first respondent is, therefore, being disingenuous by even mentioning the correspondence in its response to this matter as the reasons for such non-attendance were clearly explained. It is further appreciated that the Registrar, who

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

occupies a different role from this Tribunal attended such meeting, as it is this Tribunal's view that to a large extent the issues in these matters were made possible by the inadvertent registration of a rule by the Registrar that is leading to undue prejudice to members of the first respondent seeking to transfer out," Ms Lukhaimane said.

She ordered the complainant and the third respondent to make representations to the Registrar, to consider amending Rule 10 of the Rules of the first respondent to address the issues raised in this determination and the Sasol matter as finalised by the Supreme Court of Appeal.

### PFA UPHOLDS REFUSAL OF TRANSFER OF FUNDS

The Pension Funds Adjudicator has dismissed a complaint from a member whose request to transfer from one provident fund to another had been refused.

P Mokgopha who had been employed by Sun International (SA) Ltd from December 1998 was a member of SACCAWU National Provident Fund (first respondent).

He told Pension Funds Adjudicator, Muvhango Lukhaimane that he wished to transfer to the Sun International Provident Fund.

He said the first respondent had been under administration "for a very long time" and his funds were not growing. He did not realise that when he joined the first respondent, he could not change the fund whilst still in employment.

He was told that the rules of the first respondent did not allow him to join the Sun International Provident Fund.

The Old Mutual Life Assurance Company (SA) (Pty) Ltd (second respondent) responded to the complaint in its capacity as the first respondent's administrator. It submitted that the first respondent was not under administration, but was placed provisionally under curatorship on 10 September 2002 by the High Court of South Africa.

It stated that since the first respondent had been placed under curatorship, its assets had tripled in value. The first respondent was in excellent financial standing and was submitting audited annual financial statements to the Financial Services Board.

The second respondent attached a breakdown of the complainant's contribution history and the bonuses allocated to his record to show growth of his accumulated credit since the date he joined the first respondent.



### INTERNS

From Left to Right: Tshepo Thulare; Ndivhuwo Manyuma; Neo Maroga.



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

The second respondent submitted that the member could only resign from the first respondent if he left the employer. It also submitted that it would ensure that the first respondent was in good financial standing and that there was no reason for concern.

In her determination, Ms Lukhaimane said the rules of a fund were paramount and always prevailed over any other document.

“The complainant can only transfer his funds to another fund once he ceases to be an eligible employee and exits the first respondent in terms of the first respondent’s rules.

“The rules of the first respondent do not allow for the complainant’s funds to be transferred to the Sun International Provident Fund. The complainant is obliged to remain a member of the first respondent until his retirement, retrenchment, termination of service or death in terms of the first respondent’s rules.

“By allowing the complainant to transfer his funds to the Sun International Provident Fund, the first respondent will be acting contrary to its rules.”

In dismissing the complaint, Ms Lukhaimane said that since the curator had submitted that the fund was now in a healthy state, it was important for the Registrar to review whether or not the placement of the first respondent under curatorship was still necessary.

### ENFORCEMENT OF A DEFECTIVE COURT ORDER

#### PENSION FUND ENFORCED A DEFECTIVE COURT ORDER

A “large and experienced” player in the pension industry should have known better than to have enforced a defective court order, says the Pension Funds Adjudicator.

Muvhango Lukhaimane said that in giving effect to a defective court order that was non-compliant with the provisions of the Pension Funds Act and the Divorce Act, Metropolitan Retirement Annuity Fund was abetting the transgression of legislation and a court order.

Ms Lukhaimane’s criticism stemmed from a matter in which Ms KJ Guild (complainant) claimed she was unhappy with the payment of pension interest following her divorce.

The marital bond between the complainant and her former spouse was dissolved in terms of the divorce order issued on 29 November 2013 by the Southern Gauteng High Court in

Johannesburg.

The relevant part of the settlement agreement which was made an order of the court was that the proceeds of a retirement annuity policy in the former spouse’s name be paid to the complainant upon maturity on 1 April 2018.

The complainant submitted that she was dissatisfied with the amount of the pension interest paid to her. She said the value of the policy amounted to R204 171. However, she was only paid an amount of R138 573 which, she said, was not in accordance with the divorce order.

She further stated that she was informed by MMI Group Limited (second respondent) that the first respondent could not pay her the entire amount in terms of the Divorce Act.

In its response, the second respondent said that the divorce order that was granted, could not in its present wording be made enforceable against the first respondent because in terms of the Divorce Act, the fund may only assign the maximum of pension interest contained in the fund calculated at the date of divorce.

It submitted that to alleviate the complainant and the former spouse from redrafting the settlement agreement at great cost, the first respondent requested the parties to sign an amendment to the agreement to give effect to their intentions that the non-member spouse obtains the maximum value in the fund.

In this regard, it referred to the letter dated 11 March 2015 in terms of which the parties recorded that 100% of the pension interest be assigned and paid to the complainant.

Therefore, the first respondent could not pay the whole benefit but only 100% of the value of the pension interest calculated up to the date of divorce, i.e. 20 November 2013, in accordance with legislation.

In her determination, Ms Lukhaimane said in terms of the Divorce Act, the divorce benefit accrues to the non-member spouse on the date of divorce.

She said that in terms of the decree of divorce granted to the complainant, the paying spouse had authorised Momentum Life to pay the full proceeds of the policy to the complainant on maturity of the policy on 1 April 2018.

She said the divorce order did not comply with the requirements of the Divorce Act as it facilitates cession of the pension proceeds.



## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

“The divorce order also fails to mention that the records of the first respondent must be endorsed to reflect and confirm that a percentage of the pension interest held in the first respondent must be paid to the complainant and calculated as at the date of divorce, which is also not in line with the provisions of the Divorce Act.

“Further, the divorce order does not specifically order the first respondent to pay pension interest to the complainant, which is also at odds with the provisions of the Divorce Act.

“The complainant submits that Mr Guild’s fund value amounted to R204 171. However, the first respondent only paid her an amount of R138 573 and thus she is of the view that the first respondent failed to adhere to the divorce order.

“It is clear from the definition of pension interest in terms of the Divorce Act that, a non-member spouse is only entitled to pension interest constituted of total contributions up to the date of divorce plus a total amount of annual simple interest on those contributions up to that date.”

Ms Lukhaimane said the first respondent paid 100% of the proceeds to the complainant and not the pension interest as required in terms of the Act.

She was critical of the first respondent’s submission that it noted that the divorce order was not compliant with the Divorce Act and Pension Funds Act. However, to assist the parties and alleviate them from redrafting the settlement agreement, the first respondent requested the parties to sign an amendment to the settlement agreement in order to give effect to their intentions that the non-member spouse obtains the maximum value in the fund.

“This Tribunal views the first respondent’s conduct of giving effect to a defective order which is non-compliant with the provisions of the Pension Funds Act and the Divorce Act, as abetting the transgression of legislation and a court order and deserving of deprecation.

“As a large and experienced player in the industry, the first respondent should have considered that enforcing an invalid court order impacts on its seriousness to champion governance and compliance within its operations.

“Unfortunately, the horse has bolted as the complainant has already been paid the proceeds of the pension benefit. This Tribunal cannot aid any of the parties herein as the divorce order is non-compliant with legislative prescripts.”

In the circumstances, the complaint was dismissed.

## RECOGNITION OF ISLAMIC MARRIAGE

### PFA RULES ISLAMIC MARRIAGES VALID FOR DIVORCE PENSION PAYOUTS

The Office of the Pension Funds Adjudicator has reiterated it will not discriminate against parties married in terms of Islamic law.

This was made abundantly clear by Muvhango Lukhaimane, the Pension Funds Adjudicator, in a determination in which she ordered Sanlam Staff Umbrella Pension Fund to reverse its earlier decision not to pay a complainant, Ms Z Paulse, a 50% share of the pension interest in a divorce settlement.

Sanlam Staff Umbrella Pension Fund (first respondent) and its administrator, Sanlam Life Insurance Limited (second respondent), submitted that the parties were not married in terms of the Marriage Act, 25 of 1961 (i.e. civil marriage), the Recognition of Customary Marriages Act, 120 of 1998 or the Civil Union Act, 17 of 2006, but in terms of the tenets of the Islamic religion.

They claimed the Divorce Act was not applicable to the dissolution of the said marriage as the latter had to be dissolved in terms of the tenets of the Islamic religion.

A decree of divorce as contemplated in terms of the Divorce Act was not possible since there was no marriage as contemplated in terms of the Divorce Act.

The marital bond between the complainant and Mr Paulse was dissolved on 20 February 2013 in terms of the tenets of the Islamic religion. The divorce and the settlement agreement between the parties were made an order of the Western Cape High Court in Cape Town on 25 February 2014.

The respondents submitted that in terms of section 7(8), only a court granting a decree of divorce can grant a section 7(8) order and argued that the court order at hand was granted following application proceedings.

The respondents agreed that in terms of the recently amended section 37D(a)(d)(i) of the Pension Funds Act, a marriage under Islamic law was recognised for the sake of payment of pension interest.

They contended that, however, if the intention was that it should be possible to obtain section 7(8) orders in respect of Islamic marriages, there was a shortcoming in the legislation insofar as the Financial Services General Laws Amendment Act, 2013 only amended section 37D(1)(d)(i) of the Act, while

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

there were many provisions in the Act, the Income Tax Act, 58 of 1962 and the Divorce Act, which required amendment before orders following the dissolution of Islamic marriages may be treated in the same manner as the dissolution of civil and customary marriages.

The respondents said the above-mentioned shortcoming had been brought to the attention of the Deputy Registrar of Pension Funds at the meeting with the Institute of Retirement Fund's (IRF) Legal and Technical Committee.

The IRF asked the Financial Services Board to assist in order to motivate to the Department of Justice for the amendment of the Divorce Act and the Act in order to allow divorce orders contemplated in Section 7(8) of the Act as well as the "clean break" as provided in the Act in respect of Islamic marriages.

It indicated that the IRF was in the process of making submissions and it was likely that legislative amendments would be made. However, there was no indication as to when such will be implemented.

The respondents said the parties could choose to wait for the legislative amendments and then resubmit the order to the first respondent and claim the payment of the share of the pension interest to the non-member spouse. However, there is no guarantee that such legislative amendments will apply retrospectively. Alternatively, the parties could elect to resolve the matter between themselves without the involvement of the first respondent.

The respondents also disagreed with a decision by the Office of the Pension Funds Adjudicator in a similar 2012 matter of *Tyron v Nedgroup Defined Contribution Pension and Provident Funds and Another*.

In that determination, the Pension Funds Adjudicator ruled that a spouse in an Islamic marriage was still entitled to pension interest allocated to her in terms of a divorce order and the complainant had every right to be considered as a spouse for the purposes of payment of pension interest.

In her determination, Ms Lukhaimane said that prior to 28 February 2014, parties who divorced after having married in terms of the Islamic religion confronted a challenge when a non-member spouse intended to claim pension interest held by a fund in respect of the member spouse.

More often, the resistance waged by the funds was based on the fact that such marriages were not recognised in terms of the Marriage Act of 1961 and, therefore, divorce orders issued pursuant to the dissolution of Islamic marriages did not

constitute a divorce order as contemplated in terms of section 7(8)(a) of the Divorce Act, 70 of 1979 and section 37D(1) of the Act.

She said the issue of the non-recognition of Islamic marriages was brought to the scrutiny of the Constitutional Court in the matter of *Daniels v Campbell NO and Others* 2004 (5) SA 331 (CC)).

In this matter Sachs J observed that, the word "spouse" in its ordinary meaning included parties to a Muslim marriage.

Such a reading was not linguistically strained but corresponded to the way the word was generally understood and used. It was far more awkward from a linguistic point of view to exclude parties to a Muslim marriage from the word "spouse" than to include them.

Ms Lukhaimane said that presented with a situation wherein the fund refused to pay a pension interest to a non-member spouse on the grounds that parties had been married and divorced in terms of Islamic law, this Tribunal issued a determination in the matter of Tyron.

In this matter, the Tribunal held that it was possible for spouses married and divorced in terms of Islamic law, to share in the other spouse's pension interest upon divorce, thereby ordering that the member spouse's retirement fund must make payment to the non-member spouse if the agreement reached between the parties regarding the division of pension interest stated as much and has been made an order of court.

In order to address the *lacuna* with respect to the payment of pension interest to parties divorced in terms of the Islamic law, legislative amendments were made in the Act to cater for Islamic marriages.

Ms Lukhaimane said while she welcomed the respondents' concern about the need to make amendments to certain provisions of the Act and other relevant pieces of legislation in order to give full effect to the provisions of section 37D(1)(d) (i) of the Act, it was the Tribunal's view that the intention of the legislature was to accord spouses married in terms of Islamic law equal treatment granted to parties married in terms of civil and customary marriages in so far as dealing with patrimonial assets following the dissolution of a marriage.

"Were this Tribunal to accede to the request of the respondents for the parties to wait until an amendment is made to the relevant pieces of legislation, it would be perpetuating a differentiation which cannot be justified in a democratic and multi-cultural society as ours.

## SUMMARY OF IMPORTANT DETERMINATIONS, CONTINUED

"This Tribunal holds the view that it cannot be party to the perpetuation of injustice and discrimination against parties married and divorced in terms of Islamic tenets, where it is clear that the legislature intended them to be treated in a similar fashion as parties in civil and customary marriages, and where parties have reached an agreement regarding the payment of pension interest and made such an agreement an order of the court."

Ms Lukhaimane noted the fact that the IRF would be making submissions to the FSB for legislative amendments to be effected as submitted by the second respondent.

"However, whilst that process takes care of itself, the first respondent must comply with the provisions of the Act and the divorce order and, thereafter, pay a share of the pension interest to the complainant as stipulated in the settlement agreement made an order of court."

The first respondent was ordered to compute and pay the complainant her share of pension interest as provided in the divorce settlement agreement.

### SECTION 30P APPEALS

#### APPEAL COURT SUPPORTS PFA RULING ON UNISA STATUS

The Supreme Court of Appeal endorsed a ruling by the Pension Funds Adjudicator, confirming that a student registered at Unisa did not forfeit her pension benefit as she was regarded as studying full-time and not part-time.

The case was taken on appeal by the SA Local Authorities Pension Fund against a decision by the Pension Funds Adjudicator, Muvhango Lukhaimane, who found that Durban resident Mbali Mthembu was entitled to benefits from her father's pension fund after she turned 23, because she was a full-time student.

The Fund said Ms Lukhaimane's decision was wrong because Mthembu was registered at the University of South Africa (Unisa), which was a "part-time" distance learning institution.

According to the scheme's rules, a child can only receive benefits until the age of 23 if she is registered as a full-time student.

Mthembu enquired about the stoppage of funds and then submitted a letter from Unisa to the fund to confirm she was enrolled for a BCom degree.

In dismissing the appeal with costs, Judge Malcolm Wallis said the Pension Funds Adjudicator was correct in her ruling against the pension fund.

In her determination, Ms Lukhaimane said: "The Paperback Oxford English Dictionary defines full time as using the whole of a person's available working time. In modern era it is quite difficult to define a full-time student.

"A definition of a full-time student cannot be limited to a person who attends classes on a daily basis with a tertiary institution anymore. The definition is much wider than that in this day and age where technology is quite advanced and facilitates studying full-time without attending classes on a daily basis.

"Furthermore, the correspondence dated 26 August 2011 from UNISA did not state that the complainant's daughter is not a full-time student. The correspondence provides that the complainant's daughter is a registered student and she attends discussion classes to enhance her chances of passing."

She ordered that the Fund's decision to terminate the child's pension be set aside. The respondent was ordered to reinstate and pay the child's pension.

Judge Wallis said the definition of "full-time" in the Collins English Dictionary (1985) and the Concise Oxford English Dictionary supported the view that Mbali was a full-time student.

He said the Fund, however, proffered its own definition, namely: "... A full-time student in terms of its rules is a student who is required by the institution to devote all or substantially all of her productive time to her studies and is thus classified by the institution as a full-time student."

Judge Wallis said this definition introduces elements to the concept of "full-time" that are unusual.

"It moves away from examining what the student does to what the institution requires of the student.

"Thus the student must be 'required' to attend classes, although counsel rightly accepted that a student would still be a full time student if they missed all their classes and spent their time playing video games, socialising or surfing.

"In other words it is enough if the institution requires them to attend classes. They do not in fact have to do so.

"The result is that the diligent Mbali, who was working hard and attending study groups at the university, is not a full-time student, but the layabout is. That is an unattractive proposition."



## CORPORATE GOVERNANCE

### COMMITMENT

The Board is responsible for monitoring standards of sound corporate governance and fully endorses the application of the recommendations of the King Report on Corporate Governance (King III). The Board is committed to governance processes that give assurance to stakeholders that the operations of the Office of the Pension Funds Adjudicator (OPFA) are conducted ethically within prudent risk parameters in pursuit of best practice.

To the best of the Board's knowledge, information and belief, the OPFA complied with applicable legislation, policies and procedures, and codes of governance in the financial review period.

### COMPOSITION OF THE BOARD AND ITS ROLE

The Board is the designated accounting authority and governs the OPFA in accordance with the provisions of the Pension Funds Act, No. 24 of 1956 (the Act), the Public Finance Management Act, 1999 (PFMA) and good corporate governance principles.

The Board comprises of 11 (eleven) non-executive Board members from diverse backgrounds appointed by the Minister of Finance with due regard to experience, technical skills, and the interests of users and providers of financial services, including financial intermediaries and the public interest.

The Board remains primarily responsible for the leadership of the OPFA and for strategic direction and policy, operational performance, financial matters, risk management and compliance. The Board of the Financial Services Board (FSB) was, with effect from 1 April 2010, the accounting authority of the OPFA. The Board generally exercises leadership, integrity and judgement in directing the OPFA in a manner based on transparency, accountability and responsibility. The Board is also the focal point of the corporate governance system within the OPFA. Authority for the day-to-day management of the activities of the OPFA is delegated to the management team (the mandate, role and responsibilities of the Board are set out in the Board Charter).



#### Members of the Financial Service Board

**Standing (left to right):** Mr Hamilton Ratshefola, Prof Philip Sutherland, Mr Abel Sithole (Chairperson), Ms Jabu Mogadime, Mr Olano Makhubela.

**Seating (left to right):** Ms Hilary Wilton (Deputy Chairperson), Ms Zarina Bassa, Ms Dudu Msomi, Ms Diana Turpin.

**Absent:** Mr Ismail Momoniat and Mr Francois Groepe.

## CORPORATE GOVERNANCE, CONTINUED

### DELEGATION OF AUTHORITY

The Board has the authority to lead, control and manage the business of the OPFA. The Board has developed a governance structure of Board committees and has delegated through a comprehensive delegation-of-authority framework some of its authority to the Adjudicator and to MANCO to manage the day-to-day business affairs of the OPFA. The delegation of authority assists decision-making and delivery of strategic objectives without exonerating the Board of its accountability and responsibilities for the OPFA.

### MATERIALITY AND SIGNIFICANT FRAMEWORK

The Board approved a framework of acceptable levels of materiality and significance in accordance with the Public Finance Management Act, 1999 as amended (PFMA).

### BOARD MEETINGS

Board meetings are held at least once a quarter and special Board meetings are convened whenever necessary. During the review period, four scheduled Board meetings were held and no extraordinary Board meetings were convened. Details of attendance by each Board member are set out in the table below.

Name of Board member	29/07/2015	14/10/2015	02/12/2015	29/03/2016
A Sithole (Chairperson)	^	^	^	^
H Wilton (Deputy Chairperson)	^	^	A	A
Z Bassa	^	^	^	^
F Groepe	^	^	^	^
O Makhubela	^	^	^	^
J Mogadime	^	^	^	^
I Momoniat	^	A	^	A
D Msomi	^	^	^	A
H Ratshefola	A	A	^	^
PJ Sutherland	^	^	^	A
D Turpin	^	^	^	A

^ Attendance

A Apologies

### BOARD SECRETARY

All Board members have access to the advice and services of the Board Secretary, who is responsible for ensuring proper governance of the Board. The Board Secretary provides guidance to Board members on their responsibilities within the enabling legislative framework.

### COMMITTEES OF THE BOARD

The Board exercises oversight over the OPFA's operations through a governance structure comprising various subcommittees. The committees are responsible for ensuring that the OPFA complies with, inter alia, relevant legislation, codes of good corporate governance and practices. Each committee has its own terms of reference, which are reviewed annually in line with best practice.

## CORPORATE GOVERNANCE, CONTINUED

### AUDIT COMMITTEE

The committee is a statutory sub-committee of the Board and assists the Board with its responsibility of safeguarding assets, maintaining effective and efficient internal controls, reviewing the financial information and overseeing the preparation of the annual financial statements. The committee meets at least four times a year. Details of attendance of meetings by each committee member are set out in the table that follows.

Name of member	22/04/2015	27/05/2015	17/07/2015	03/09/2015	24/11/2015	22/03/2016
J Mogadime (Chairperson)	^	^	^	^	^	^
D Msomi	^	^	^	^	^	^
PJ Sutherland	^	^	^	^	^	A
H Wilton	^	^	A	A	A	A

^ Attendance

A Apologies

### RISK MANAGEMENT COMMITTEE

The committee's function is to evaluate and advise the Board on the adequacy of risk-management processes and strategies. The committee ensures that identified risks are monitored and appropriate measures are put in place and implemented to manage such risks. The committee meets at least four times a year. Details of attendance of meetings by each committee member are set out in the table that follows.

Name of member	02/06/2015	01/09/2015	23/11/2015	01/03/2016
H Wilton (Chairperson)	A	^	A	^
Z Bassa	^	^	A	^
J Mogadime	^	^	^	^
H Ratshefola	^	^	^	^
D Turpin	^	^	^	^

^ Attendance

A Apologies

### HUMAN RESOURCES COMMITTEE

This committee's function is to ensure that the OPFA's human resources strategy and policies are implemented. It meets four times a year. The members of the committee and a record of attendance of meetings during the year are reflected in the table below.

Name of member	02/06/2015	01/09/2015	16/11/2015	01/03/2016
Z Bassa (Chairperson)	^	^	^	^
H Wilton	^	^	^	^
A Sithole	^	^	^	^

^ Attendance

A Apologies



## CORPORATE GOVERNANCE, CONTINUED

### REMUNERATION COMMITTEE

The committee ensures that the OPFA's remuneration strategy and policies are implemented. It reviews compensation matters, benchmarks salaries of staff and makes recommendations to the Board. It meets four times a year. The members of the committee and a record of attendance of meetings during the year are reflected in the table below.

Name of member	02/06/2015	01/09/2015	16/11/2015	01/03/2016
H Wilton (Chairperson)	^	^	^	^
A Sithole	^	^	^	^
Z Bassa	^	^	^	^

^ Attendance

A Apologies

### STRATEGIC PLAN AND BUDGET

Management of the OPFA prepares the strategic plan and budget of the OPFA for Board consideration and approval. The strategic plan and budget are duly submitted to National Treasury for consideration and approval. Quarterly reports are submitted to National Treasury as per the requirements of the PFMA and Treasury Regulations.

# **ANNUAL FINANCIAL STATEMENTS**

FOR THE YEAR ENDED 31 MARCH 2016





## CONTENTS

The reports and statements set out below comprise the annual financial statements presented to the Parliament:

<b>Index</b>	<b>Page</b>
Accounting Authority's Responsibilities and Approval	40
Audit Committee Report	41 - 42
Report of the Auditor General	43 - 45
Statement of Financial Position	46
Statement of Financial Performance	47
Statement of Changes in Net Assets	48
Cash Flow Statement	49
Statement of Comparison of Budget and Actual Amounts	50
Accounting Policies	51 - 59
Notes to the Annual Financial Statements	60 - 73



*Richard Segers, Chief Financial Officer*



## ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

The Accounting Authority is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and are responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the members to ensure that the annual financial statements fairly present the state of affairs of the OPFA as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the annual financial statements and was given unrestricted access to all financial records and related data.

The annual financial statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

The annual financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

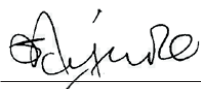
The Accounting Authority acknowledges that they are ultimately responsible for the system of internal financial control established by the OPFA and place considerable importance on maintaining a strong control environment. To enable the Accounting Authority to meet these responsibilities, the OPFA sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the OPFA and all employees are required to maintain the highest ethical standards in ensuring the OPFA's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the OPFA is on identifying, assessing, managing and monitoring all known forms of risk across the OPFA. While operating risk cannot be fully eliminated, the OPFA endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Accounting Authority is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement.

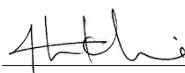
The Accounting Authority has reviewed the entity's cash flow forecast for the year to 31 March 2017 and, in the light of this review and the current financial position, they are satisfied that the entity has or has access to adequate resources to continue in operational existence for the foreseeable future.

The external Auditor is responsible for independently reviewing and reporting on the OPFA's annual financial statements. The annual financial statements have been examined by the Auditor-General and their report is presented on pages 43 - 45.

The annual financial statements set out on pages 46 to 73, which have been prepared on the going concern basis, were approved by the accounting authority on 30 July 2016 and were signed on its behalf by:



**Mr AM Sithole**  
Chairperson



**Ms MA Lukhaimane**  
Pension Funds Adjudicator

## AUDIT COMMITTEE REPORT

We are pleased to present our report for the financial year ended 31 March 2016. The committee is a sub-committee of the Board of the Financial Services Board formed in terms of section 77 (c) of the Public Finance Management Act, Act No.1 of 1999 and consists of only non-executive Board members.

The committee is a statutory sub-committee of the board and does not perform any management functions or assume any management responsibilities. The committee's role is to assist the Board in its responsibility of safeguarding assets and operating control systems and also evaluates and advises the Board on the adequacy of risk management processes and strategies. The committee ensures that identified financial risks are monitored and appropriate measures are put in place and implemented to manage such risks. Members of the OPFA Management, internal auditors and Auditor-General attend these meetings by invitation. We are pleased to present our report for the financial year ended 31 March 2016.

### AUDIT COMMITTEE MEMBERS AND ATTENDANCE

The audit committee consists of the members listed hereunder and should meet 4 (four) times per annum as per its approved terms of reference. During the current year 6 (six) number of meetings were held.

Name of member	Number of meetings attended
J Mogadime (Chairperson)	6/6
D Msomi	6/6
PJ Sutherland	5/6
H Wilton	2/6

### AUDIT COMMITTEE RESPONSIBILITY

The audit committee reports that it has complied with its responsibilities arising from section 55(1)(a) of the PFMA and Treasury Regulation 27.1.

The audit committee also reports that it has adopted appropriate formal terms of reference as its audit committee charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein.

### THE EFFECTIVENESS OF INTERNAL CONTROL

The system of internal controls applied by the OPFA over financial and risk management is effective, efficient and transparent. In line with the PFMA and the King III Report on Corporate Governance requirements, Internal Audit provides the audit committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the Internal Auditors, the Audit Report on the annual financial statements, and the management report of the Auditor-General of South Africa, it was noted that, except for what has already been highlighted, no matters were reported that indicate any material deficiencies in the system of internal control or any deviations therefrom. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective.

## AUDIT COMMITTEE REPORT, CONTINUED

### EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The audit committee has:

- reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor - General and the Accounting Authority;
- reviewed the Auditor-General of South Africa's management report and management's response thereto;
- reviewed changes in accounting policies and practices;
- reviewed the entities compliance with legal and regulatory provisions; and
- reviewed significant adjustments resulting from the audit.

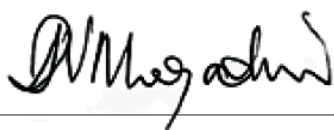
The audit committee concur with and accepts the Auditor-General of South Africa's report the annual financial statements, and are of the opinion that the audited annual financial statements should be accepted and read together with the report of the Auditor-General of South Africa.

### INTERNAL AUDIT

The audit committee is satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the OPFA and its audits.

### AUDITOR-GENERAL OF SOUTH AFRICA

The audit committee has met with the Auditor-General of South Africa to ensure that there are no unresolved issues.



Ms J Mogadime

30 July 2016



## REPORT OF THE AUDITOR-GENERAL

TO PARLIAMENT ON THE OFFICE OF THE PENSION FUNDS ADJUDICATOR

REPORT ON THE FINANCIAL STATEMENTS

### INTRODUCTION

1. I have audited the financial statements of the Office of the Pension Funds Adjudicator set out on pages 46 to 73, which comprise the statement of financial position as at 31 March 2016, the statement of financial performance, statement of changes in net assets, cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as the notes, comprising a summary of significant accounting policies and other explanatory information.

### ACCOUNTING AUTHORITY'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP), the requirements of the Public Finance Management Act of South Africa, 1999 (Act No.1 of 1999) (PFMA) and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### AUDITOR-GENERAL'S RESPONSIBILITY

3. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with International Standards on Auditing. Those standards require that I comply with ethical requirements, and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### OPINION

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Pension Funds Adjudicator as at 31 March 2016, and its financial performance and cash flows for the year then ended, in accordance with the South African Standards of Generally Recognised Accounting Practice, and the requirements of the PFMA.

### EMPHASIS OF MATTER PARAGRAPH

7. The following emphasis of matter paragraphs will be included in our auditor's report to draw the users' attention to matters presented or disclosed in the financial statements:

REPORT OF THE AUDITOR GENERAL, CONTINUED

**RESTATEMENT OF CORRESPONDING FIGURES**

8. As disclosed in note 20 to the financial statements, the corresponding figures for 31 March 2016 have been restated as a result of an error discovered during 31 March 2016 in the financial statements of the public entity for the year ended 31 March 2015.

**REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS**

9. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) and the general notice issued in terms thereof, I have a responsibility to report findings on the reported performance information against predetermined objectives for selected objectives presented in the annual performance report, non-compliance with legislation and internal control. The objective of my tests was to identify reportable findings as described under each subheading but not to gather evidence to express assurance on these matters. Accordingly, I do not express an opinion or conclusion on these matters.

**PREDETERMINED OBJECTIVES**

10. I performed procedures to obtain evidence about the usefulness and reliability of the reported performance information for the following selected objectives presented in the annual performance report of the public entity for the year ended 31 March 2016:
- Objective 1: Dispose of complaints received on pages 74 to 75
  - Objective 2: Achieve operational excellence on pages 74 to 75
11. I evaluated the usefulness of the reported performance information to determine whether it was presented in accordance with the National Treasury's annual reporting principles and whether the reported performance was consistent with the planned objectives. I further performed tests to determine whether indicators and targets were well defined, verifiable, specific, measurable, time bound and relevant, as required by the National Treasury's Framework for Managing Programme Performance Information (FMPPI).
12. I assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
13. I did not raise any material findings on the usefulness and reliability of the reported performance information for the following objectives:
- Objective 1: Dispose of complaints received
  - Objective 2: Achieve operational excellence

**ADDITIONAL MATTER**

14. I draw attention to the following matters:

**ACHIEVEMENT OF PLANNED TARGETS**

15. Refer to the annual performance report on pages 74 to 75 for information on the achievement of the planned targets for the year.

REPORT OF THE AUDITOR GENERAL, CONTINUED

**ADJUSTMENT OF MATERIAL MISSTATEMENTS**

16. We identified a material misstatement in the annual performance report submitted for auditing on the reported performance information for the following objective; Dispose of complaints received. Management subsequently corrected the misstatement we identified on the usefulness of the reported performance information, the annual performance report for performance information is free from material misstatements.

**COMPLIANCE WITH LEGISLATION**

17. I performed procedures to obtain evidence that the public entity had complied with applicable legislation regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key legislation, as set out in the general notice issued in terms of the PAA, are as follows:

**PROCUREMENT AND CONTRACT MANAGEMENT**

18. The preference point system was not applied in all procurement of goods and services above R30 000 as required by section 2(a) of the Preferential Procurement Policy Framework Act and Treasury Regulations 16A6.3(b).

**INTERNAL CONTROL**

19. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with laws and regulations. The matters reported below are limited to the significant internal control deficiencies that resulted in the findings on non-compliance with legislation included in this report.

**LEADERSHIP**

20. Management did not exercise adequate oversight responsibility regarding compliance with supply chain management regulations.

**FINANCIAL AND PERFORMANCE MANAGEMENT**

21. Management did not adequately review and monitor compliance with applicable legislation.

*Auditor - General*

Pretoria  
30 July 2016



**STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2016**

Figures in Rand	Note(s)	2016	2015
<b>Assets</b>			
Current Assets			
Receivables from exchange transactions	6	94 027	188 749
Receivables from non-exchange transactions	7	1 166 077	1 376 984
Prepayments		633 501	573 982
Cash and cash equivalents	8	1 572 792	1 371 185
		<b>3 466 397</b>	<b>3 510 900</b>
Non-Current Assets			
Property, plant and equipment	3	5 643 456	7 531 955
Intangible assets	4	2 035 860	1 107 047
		<b>7 679 316</b>	<b>8 639 002</b>
<b>Total Assets</b>		<b>11 145 713</b>	<b>12 149 902</b>
<b>Liabilities</b>			
Current Liabilities			
Trade payables from exchange transactions	9	3 141 931	3 638 468
<b>Total Liabilities</b>		<b>3 141 931</b>	<b>3 638 468</b>
<b>Net Assets</b>		<b>8 003 782</b>	<b>8 511 434</b>
Accumulated surplus		8 003 782	8 511 434

**STATEMENT OF FINANCIAL PERFORMANCE**

<b>Figures in Rand</b>	<b>Notes</b>	<b>2016</b>	<b>2015</b>
<b>Revenue</b>			
Non-Exchange transactions	10	47 136 955	43 768 702
<b>Other income</b>			
Interest received	11	13 182	11 523
Gains on disposal of assets		7 342	-
		<b>20 524</b>	<b>11 523</b>
<b>Expenses</b>			
Auditors remuneration - External	12	(993 098)	(1 296 442)
Auditors remuneration - Internal		(276 337)	(377 919)
Consulting and professional fees		(946 430)	(1 024 384)
Depreciation and amortisation		(3 382 292)	(3 019 300)
Foreign exchange loss		(546)	157
Information technology maintenance and support		(3 495 121)	(3 020 232)
Legal fees		(643 485)	(731 352)
Loss on disposal of assets		-	(62 474)
Operating lease rentals		(4 870 944)	(4 841 908)
Other operating expenses		(6 031 543)	(5 564 021)
Personnel costs		(27 025 335)	(26 139 630)
		<b>(47 665 131)</b>	<b>(46 077 505)</b>
<b>Deficit for the year</b>		<b>(507 652)</b>	<b>(2 297 280)</b>

## STATEMENT OF CHANGES IN NET ASSETS

Figures in Rand	Accumulated surplus	Total net assets
<b>Balance at 01 April 2014</b>	<b>10 808 713</b>	<b>10 808 713</b>
Changes in net assets		
Surplus for the year	(2 297 279)	(2 297 279)
Total changes	(2 297 279)	(2 297 279)
<b>Balance at 01 April 2015</b>	<b>8 511 433</b>	<b>8 511 433</b>
Changes in net assets		
Surplus for the year	(507 651)	(507 651)
Total changes	(507 651)	(507 651)
<b>Balance at 31 March 2016</b>	<b>8 003 782</b>	<b>8 003 782</b>

Note(s)



**CASH FLOW STATEMENT**

Figures in Rand	Notes	2016	2015
<b>Cash flows from operating activities</b>			
<b>Receipts</b>			
Finance income		13 182	11 523
Cash received from Financial Services Board		47 383 065	44 801 802
		47 396 247	44 813 325
<b>Payments</b>			
Cash paid to personnel		(27 025 335)	(26 139 630)
Cash paid to suppliers		(17 754 043)	(17 003 588)
		(44 779 378)	(43 143 218)
<b>Net cash flows from operating activities</b>	14	<b>2 616 869</b>	<b>1 670 107</b>
<b>Cash flows from investing activities</b>			
Purchase of property, plant and equipment	3	(1 004 216)	(1 326 953)
Proceeds from sale of property, plant and equipment	3	12 586	23 663
Purchase of intangible assets	4	(1 423 632)	(877 624)
<b>Net cash flows from investing activities</b>		<b>(2 415 262)</b>	<b>(2 180 914)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>201 607</b>	<b>(510 807)</b>
Cash and cash equivalents at the beginning of the year		1 371 185	1 881 992
<b>Cash and cash equivalents at the end of the year</b>	8	<b>1 572 792</b>	<b>1 371 185</b>

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

## Budget on Cash Basis

Figures in Rand	Approved and Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Note
<b>Statement of Financial Performance</b>				
<b>Revenue</b>				
<b>Revenue from exchange transactions</b>				
Interest received - investment	10 201	13 182	2 981	
<b>Revenue from non-exchange transactions</b>				
<b>Transfer revenue</b>				
Contributions from the Financial Services Board	47 136 955	47 136 955	-	
<b>Total revenue</b>	<b>47 147 156</b>	<b>47 150 137</b>	<b>2 981</b>	
<b>Expenditure</b>				
Personnel costs	(28 950 058)	(27 025 335)	1 924 723	26
Auditors remuneration - External	(1 200 000)	(993 098)	206 902	26
Auditors Remuneration - Internal	(445 336)	(276 337)	168 999	
Consulting and professional fees	(1 300 000)	(1 142 888)	157 112	
Depreciation and amortisation	(4 440 000)	(3 382 292)	1 057 708	26
Information technology maintenance and support	(3 340 572)	(3 495 121)	(154 549)	
Intangible asset acquisitions	(1 905 000)	(1 476 099)	428 901	26
Legal fees	(900 000)	(643 485)	256 515	26
Operating Lease rentals	(4 845 060)	(4 873 875)	(28 815)	
Property, Plant and Equipment acquisitions	(1 680 000)	(1 004 216)	675 784	26
Other operating expenses	(6 386 845)	(5 842 683)	544 162	26
<b>Total expenditure</b>	<b>(55 392 871)</b>	<b>(50 155 429)</b>	<b>5 237 442</b>	
<b>Operating deficit</b>	<b>(8 245 715)</b>	<b>(3 005 292)</b>	<b>5 240 423</b>	
Gain on disposal of assets and liabilities	-	7 342	7 342	
<b>Deficit</b>	<b>(8 245 715)</b>	<b>(2 997 950)</b>	<b>5 247 765</b>	
<b>Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement</b>				
	<b>(8 245 715)</b>	<b>(2 997 950)</b>	<b>5 247 765</b>	
<b>Reconciliation</b>				
<b>Basis difference</b>				
Acquisition of Property, plant and equipment and Intangible assets		2 427 848		
Straight lining of lease rentals		2 931		
Prepayments		59 519		
<b>Actual Amount in the Statement of Financial Performance</b>		<b>(507 652)</b>		

## ACCOUNTING POLICIES

### 1. Basis of Preparation and Presentation

The Office of the Pension Funds Adjudicator (OPFA) is a National Public Entity as specified in Schedule 3A of the Public Finance Management Act (PFMA), Act No 1 of 1999 (as amended by Act 29 of 1999). The principle accounting policies applied in preparation and presentation of these financial statements are set out below. These policies have been consistently applied to the years presented, unless otherwise stated.

The annual financial statements have been prepared in accordance with the South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 and 89 of the Public Finance Management Act, Act No. 1 of 1999 (as amended by Act 29 of 1999).

These annual financial statements have been prepared on the assumption that the OPFA will continue to operate as a going concern for at least the next 12 months and, on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise. They are presented in South African Rand.

In the absence of an issued and effective Standard of GRAP, accounting policies for material transactions, events or conditions were developed in accordance with paragraphs 8, 10 and 11 of GRAP 3 as read with Directive 5.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

#### 1.1 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Estimates and underlying assumptions are reviewed on an ongoing basis. Revision to accounting estimates are recognised in the period in which the estimate is revised and in any future periods affected. Significant judgements include:

##### Receivables from exchange and non-exchange transactions

The OPFA assesses its receivables from exchange and non exchange transactions for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in surplus or deficit, the OPFA makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

The impairment for receivables from exchange and non exchange transactions is calculated on a portfolio basis, based on historical loss ratios, adjusted for national and industry-specific economic conditions and other indicators present at the reporting date that correlate with defaults on the portfolio. These annual loss ratios are applied to loan balances in the portfolio and scaled to the estimated loss emergence period.

##### Impairment testing for non-financial assets

The OPFA reviews and tests the carrying value of assets when events or changes in circumstances suggest that the carrying amount may not be recoverable. If there are indications that impairment may have occurred, estimates are prepared of expected future cash flows for each group of assets. OPFA determines the recoverable amount. The recoverable amount is the higher of fair value less costs to sell and value in use. These calculations require the use of estimates and assumptions.



## ACCOUNTING POLICIES, CONTINUED

## 1.1 Significant judgements and sources of estimation uncertainty, continued

**Depreciation - Useful lives and residual values**

The OPFA reassesses the useful lives and residual values of property, plant and equipment and intangible assets on an annual basis. In reassessing the useful lives and residual values of property, plant and equipment and intangible assets, management considers the condition and the use of the individual assets to determine the remaining period over which the asset can and will be used.

## 1.2 Property, plant and equipment

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses. Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition. Depreciation is recognised in surplus or deficit on the straight line basis over their expected useful lives to their estimated residual values.

Depreciation commences when the asset is ready for its intended use. The annual depreciation rates are based on the following estimated average asset lives:

Item	Average useful life
Machinery	10 years
Furniture and fixtures	5 to 10 years
Motor vehicles	5 years
Office equipment	3 to 7 years
IT equipment	3 to 5 years
Leasehold improvements	Lease period
Library Books	4 to 8 years
Paintings and sculptures	5 to 10 years
Signage	Lease period

The residual value, and the useful life and depreciation method of each asset are reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate.

Items of entity are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item. Such difference is recognised in the surplus or deficit when the item is derecognised.

## 1.3 Intangible assets

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

Item	Useful life
Computer software	3 - 5 years

## ACCOUNTING POLICIES, CONTINUED

Computer software licenses and costs associated with the development or maintenance of computer software programs are recognised as an expense as incurred.

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

The gain or loss arising from the derecognition of an intangible assets is included in surplus or deficit when the asset is derecognised.

### 1.4 Financial instruments

#### Classification

The entity classifies financial assets and financial liabilities into the following categories:

- Financial assets measured at amortised cost which comprise of receivables from exchange and non-exchange transactions and cash and cash equivalents.
- Financial liabilities measured at amortised cost which comprise of trade and other payables from exchange transactions.

Classification depends on the purpose for which the financial instruments were obtained / incurred and takes place at initial recognition. Classification is re-assessed on an annual basis, except for derivatives and financial assets designated as at fair value through surplus or deficit, which shall not be classified out of the fair value through surplus or deficit category.

#### Initial recognition and subsequent measurement

Financial instruments are recognised initially when the OPFA becomes a party to the contractual provisions of the instruments.

The OPFA classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

Transaction costs are included in the initial measurement of the financial instrument.

Purchases of financial assets are accounted for at trade date.

#### Receivables from exchange and non-exchange transactions

These financial assets at amortised cost are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the loss is recognised in the surplus or deficit. When a receivable is uncollectable, it is written off against the allowance account for receivables. Subsequent recoveries of amounts previously written off are recognised in surplus or deficit.

#### Cash and cash equivalents

These financial assets at amortised cost are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

## ACCOUNTING POLICIES, CONTINUED

### 1.4 Financial instruments, continued

Cash and cash equivalents comprise of cash at bank and cash on hand that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value. These are initially measured at fair value, and subsequently at amortised cost using the effective interest method.

#### Trade and other payables from exchange transactions

These financial liabilities at amortised cost are subsequently measured at amortised cost, using the effective interest method.

#### Fair value determination

Fair value information for trade and other receivables is determined as the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

#### Impairment of financial assets

At each end of the reporting period the OPFA assesses all financial assets, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired. For amounts due to the entity, significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy and default of payments are all considered indicators of impairment.

Impairment losses are recognised in surplus or deficit.

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

### 1.5 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

#### Operating leases

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

### 1.6 Prepayments

Prepayments are payments made in advance for services that have not been delivered for which the OPFA expects the delivery in the next financial period. Prepayments are recognised as current assets and are not discounted as the discounting effect thereof is considered immaterial.

### 1.7 Impairment of non-cash-generating assets

Cash-generating assets are assets managed with the objective of generating a commercial return. An asset generates a commercial return when it is deployed in a manner consistent with that adopted by a profit-oriented entity.

Non-cash-generating assets are assets other than cash-generating assets.

## ACCOUNTING POLICIES, CONTINUED

### Identification

When the carrying amount of a non-cash-generating asset exceeds its recoverable service amount, it is impaired.

The entity assesses at each reporting date whether there is any indication that a non-cash-generating asset may be impaired. If any such indication exists, the entity estimates the recoverable service amount of the asset.

This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

## 1.8 Employee benefits

### Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The expected cost of surplus sharing and bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

### Retirement benefits

Payments to defined contribution retirement benefit plans are charged as an expense as they fall due.

Payments made to industry-managed retirement benefit schemes are dealt with as defined contribution plans where the entity's obligation under the schemes is equivalent to those arising in a defined contribution retirement benefit plan.

## 1.9 Provisions and contingencies

Provisions are recognised when:

- the OPFA has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.



## ACCOUNTING POLICIES, CONTINUED

### 1.9 Provisions and contingencies, continued

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation. Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating losses.

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 16.

### 1.10 Commitments

Items are classified as commitments when an entity has committed itself to future transactions that will normally result in the outflow of cash.

Disclosures are required in respect of unrecognised contractual commitments.

Commitments for which disclosure is necessary to achieve a fair presentation should be disclosed in a note to the financial statements, if both the following criteria are met:

- Contracts should be non-cancellable or only cancellable at significant cost; and
- Contracts should relate to something other than the routine, steady, state business of the entity.

### 1.11 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one in which the municipality receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

#### Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

## ACCOUNTING POLICIES, CONTINUED

### Interest

Revenue arising from the use by others of entity assets yielding interest, royalties and dividends or similar distributions is recognised when:

- It is probable that the economic benefits or service potential associated with the transaction will flow to the entity, and
- The amount of the revenue can be measured reliably.

Interest is recognised, in surplus or deficit, using the effective interest rate method.

### 1.12 Revenue from non-exchange transactions

Revenue comprises gross inflows of economic benefits or service potential received and receivable by the OPFA, which represents an increase in net assets.

Control of an asset arise when the entity can use or otherwise benefit from the asset in pursuit of its objectives and can exclude or otherwise regulate the access of others to that benefit.

Non-exchange transactions are transactions whereby the entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

Non-exchange revenue consists of funding transferred from Financial Services Board to the office of the Pension Funds Adjudicator.

### Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the OPFA satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

### Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the OPFA.

When, as a result of a non-exchange transaction, the entity recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability.

Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue. When a liability is subsequently reduced, because the taxable event occurs or a condition is satisfied, the amount of the reduction in the liability is recognised as revenue.

## ACCOUNTING POLICIES, CONTINUED

### 1.12 Revenue from non-exchange transactions, continued

#### Transfers

Apart from services in kind, which are not recognised, the entity recognises an asset in respect of transfers when the transferred resources meet the definition of an asset and satisfy the criteria for recognition as an asset.

The entity recognises an asset in respect of transfers when the transferred resources meet the definition of an asset and satisfy the criteria for recognition as an asset.

Transferred assets are measured at their fair value as at the date of acquisition.

#### Gifts and donations, including goods in-kind

Gifts and donations, including goods in kind, are recognised as assets and revenue when it is probable that the future economic benefits or service potential will flow to the entity and the fair value of the assets can be measured reliably.

### 1.13 Translation of foreign currencies

#### Foreign currency transactions

A foreign currency transaction is recorded, on initial recognition in Rands, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.

At each reporting date:

- foreign currency monetary items are translated using the closing rate.

Exchange differences arising on the settlement of monetary items or on translating monetary items at rates different from those at which they were translated on initial recognition during the period or in previous annual financial statements are recognised in surplus or deficit in the period in which they arise.

### 1.14 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

## ACCOUNTING POLICIES, CONTINUED

### 1.15 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- (a) this Act; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government.

All expenditure relating to irregular expenditure is recognised as an expense in the statement of financial performance in the period that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

### 1.16 Budget information

Entities are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

The approved budget is prepared on a cash basis and presented by economic classification linked to performance outcome objectives. The annual financial statements are prepared on the accrual basis while the budget is prepared on a cash basis of accounting therefore a comparison and reconciliation with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts and a reconciliation between financial performance and the budgeted cash flows have been detailed in note 24.

The approved budget covers the fiscal period from 01/04/2015 to 31/03/2016.

The budget for the economic entity includes all the entities approved budgets under its control.

### 1.17 Related parties

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 2. New standards and interpretations

#### 2.1 Standards and interpretations effective and adopted in the current year

In the current year, the entity has adopted the following standards and interpretations that are effective for the current financial year and that are relevant to its operations:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
<ul style="list-style-type: none"> <li>GRAP 18: Segment Reporting</li> </ul>	01 April 2015	The impact of the amendment is not material. (Refer note 25).

#### 2.2 Standards and interpretations issued, but not yet effective

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2016 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
<ul style="list-style-type: none"> <li>GRAP 20: Related parties</li> </ul>	No effective date	Application of the disclosure requirements are allowed through Directive 5 before its effective date. Disclosure has been aligned to the requirements in note 17.
<ul style="list-style-type: none"> <li>GRAP 32: Service Concession Arrangements: Grantor</li> </ul>	No effective date	It is expected that the requirements of the standard would not be applicable to the entity and the effect on the financial statements is not yet determinable.
<ul style="list-style-type: none"> <li>GRAP 108: Statutory Receivables</li> </ul>	No effective date	It is expected that the requirements of the standard would not be applicable to the entity and the effect on the financial statements is not yet determinable.
<ul style="list-style-type: none"> <li>GRAP 17: Service Concession Arrangements where a Grantor Controls a Significant Residual Interest in an Asset</li> </ul>	No effective date	It is expected that the requirements of the standard would not be applicable to the entity and the effect on the financial statements is not yet determinable.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

## 3. Property, plant and equipment

	2016			2015		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Machinery	276 849	(85 362)	191 487	276 849	(57 677)	219 172
Furniture and fixtures	1 577 217	(882 652)	694 565	1 474 438	(581 906)	892 532
Motor vehicles	195 849	(110 056)	85 793	195 849	(86 886)	108 963
Office equipment	770 996	(631 136)	139 860	756 493	(492 382)	264 111
IT equipment	5 651 511	(3 390 688)	2 260 823	4 824 018	(2 153 764)	2 670 254
Leasehold improvements	5 492 657	(3 376 318)	2 116 339	5 462 748	(2 272 753)	3 189 995
Library Books	306 192	(167 948)	138 244	292 390	(131 034)	161 356
Paintings and Sculptures	2 581	(2 482)	99	2 581	(2 117)	464
Signage	39 877	(23 631)	16 246	39 877	(14 769)	25 108
<b>Total</b>	<b>14 313 729</b>	<b>(8 670 273)</b>	<b>5 643 456</b>	<b>13 325 243</b>	<b>(5 793 288)</b>	<b>7 531 955</b>

## Reconciliation of property, plant and equipment - 2016

	Opening balance	Additions	Disposals	Depreciation	Total
Machinery	219 172	-	-	(27 685)	191 487
Furniture and fixtures	892 532	102 779	-	(300 746)	694 565
Motor vehicles	108 963	-	-	(23 170)	85 793
Office equipment	264 111	14 502	-	(138 753)	139 860
IT equipment	2 670 254	843 225	(5 244)	(1 247 412)	2 260 823
Leasehold improvements	3 189 995	29 909	-	(1 103 565)	2 116 339
Library Books	161 356	13 801	-	(36 913)	138 244
Paintings and Sculptures	464	-	-	(365)	99
Signage	25 108	-	-	(8 862)	16 246
	<b>7 531 955</b>	<b>1 004 216</b>	<b>(5 244)</b>	<b>(2 887 471)</b>	<b>5 643 456</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**3. Property, plant and equipment, continued****Reconciliation of property, plant and equipment - 2015**

	<b>Opening balance</b>	<b>Additions</b>	<b>Disposals</b>	<b>Depreciation</b>	<b>Total</b>
Machinery	246 857	-	-	(27 685)	219 172
Furniture and fixtures	1 106 532	135 407	(69 600)	(279 807)	892 532
Motor vehicles	132 132	-	-	(23 169)	108 963
Office equipment	255 572	122 694	-	(114 155)	264 111
IT equipment	2 620 277	1 051 318	(10 236)	(991 105)	2 670 254
Leasehold improvements	4 283 884	-	-	(1 093 889)	3 189 995
Library books	186 803	17 534	(6 301)	(36 680)	161 356
Paintings and sculptures	948	-	-	(484)	464
Signage	33 969	-	-	(8 861)	25 108
	<b>8 866 974</b>	<b>1 326 953</b>	<b>(86 137)</b>	<b>(2 575 835)</b>	<b>7 531 955</b>

**Other information**

	<b>2016</b>	<b>2015</b>
<b>Property, plant and equipment fully depreciated and still in use (Gross carrying amount)</b>		
Furniture and fittings, paintings and sculptures	35 440	2 251
IT equipment	302 151	308 611
Office equipment	79 061	48 854
	<b>416 652</b>	<b>359 716</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

## 4. Intangible assets

	2016			2015		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	4 116 605	(2 080 745)	2 035 860	2 692 973	(1 585 926)	1 107 047

## Reconciliation of intangible assets - 2016

	Opening balance	Additions	Amortisation	Total
Computer software	1 107 047	1 423 632	(494 819)	2 035 860

## Reconciliation of intangible assets - 2015

	Opening balance	Additions	Amortisation	Total
Computer software	561 561	988 951	(443 465)	1 107 047

## Other information

Fully amortised computer software still in use at gross carrying amount	627 606	622 576
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## 5. Employee benefit obligations

	2016	2015
<b>Defined contribution plan</b>		
It is the policy of the entity to provide retirement benefits to all its employees. The entity utilises the Allan Gray Retirement Annuity Fund, which is subject to the Pensions Fund Act, for this purpose.		
The entity is under no obligation to cover any unfunded benefits.		
The amount recognised as an expense under personnel costs for defined contribution plans is	3 379 197	3 165 084



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**6. Receivables from exchange transactions**

	2016	2015
Other receivables	-	4 916
Study assistance	94 027	183 833
	<b>94 027</b>	<b>188 749</b>

All accounts receivable are due within twelve months from the reporting date.

Receivables do not contain any items that need to be impaired at year end. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

**7. Receivables from non-exchange transactions**

Accounts receivable - Financial Services Board	1 166 077	1 376 984
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All accounts receivable are due within twelve months from the reporting date.

Receivables do not contain any items that need to be impaired at year end. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

**8. Cash and cash equivalents**

	2016	2015
Cash and cash equivalents consist of:		
Cash on hand	4 414	1 097
Cash at bank	1 568 378	1 370 088
	<b>1 572 792</b>	<b>1 371 185</b>

The cash and cash equivalents held by the OPFA may only be used in accordance with its mandate.

**9. Trade payables from exchange transactions**

Trade payables	497 357	977 873
Leave accrual	1 411 326	1 310 471
Operating lease accrual	1 081 701	1 084 633
Sundry payables	151 547	265 491
	<b>3 141 931</b>	<b>3 638 468</b>

Trade and other payables from exchange transactions principally comprise amounts outstanding for trade purchases and ongoing costs. The OPFA considers that the carrying amount of trade and other payables from exchange transactions approximates the fair value.

Included in trade and other payables from exchange transactions is an accrual for leave pay. Employees entitlement to annual leave is recognised when it accrues to the employee. An accrual is recognised for the estimated liability for annual leave due as a result of services rendered by employees up to reporting date.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**10. Revenue**

	2016	2015
Interest received - investment	13 182	11 523
Non-exchange transactions	47 136 955	43 768 702
	<b>47 150 137</b>	<b>43 780 225</b>
<b>The amount included in revenue arising from exchanges of goods or services are as follows:</b>		
Interest received	13 182	11 523
<b>The amount included in revenue arising from non-exchange transactions is as follows:</b>		
Transfer revenue		
Contributions from the Financial Services Board	47 136 955	43 768 702

**11. Investment revenue**

<b>Interest revenue</b>		
Bank	13 182	11 523

**12. Auditors' remuneration**

Current year fees	9 673	262 350
Prior year fees	983 425	1 034 092
	<b>993 098</b>	<b>1 296 442</b>

**13. Taxation**

The Office of the Pension Funds Adjudicator (OPFA) is exempt from income tax in terms of section 10(1)(cA)(i)(bb) of the Income Tax Act, 1962.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

## 14. Cash generated from operations

	2016	2015
Deficit for the year	(507 651)	(2 297 279)
<b>Adjustments for:</b>		
Depreciation and amortisation	3 382 292	3 019 300
Loss on sale of assets and liabilities	(7 342)	62 474
Unrealised foreign exchange (gain)/loss	-	264
Movements in operating lease assets and accruals	97 923	537 786
<b>Changes in working capital:</b>		
Receivables from exchange transactions	94 722	(43 443)
Other receivables from non-exchange transactions	210 907	1 419 219
Prepayments	(59 519)	(342 676)
Trade payables from exchange transactions	(594 463)	(685 538)
	<b>2 616 869</b>	<b>1 670 107</b>

## 15. Commitments

<b>Authorised capital expenditure</b>		
<b>Capital expenditure contracted for before the reporting date but not yet incurred is as follows:</b>		
• Intangible assets	123 710	922 074
<b>Total capital commitments</b>		
Already contracted for but not provided for	123 710	922 074
<b>Operating leases - as lessee (expense)</b>		
<b>Minimum lease payments due</b>		
- within one year	5 293 893	4 844 839
- in second to fifth year inclusive	5 242 817	10 304 421
	<b>10 536 710</b>	<b>15 149 260</b>

Operating lease payments represent rentals payable by the OPFA for certain of its office properties and printers. Leases are negotiated for an average term of three to five years and escalations of 0% to 8% per annum (2015: 0% to 8% per annum) have been included in the lease agreement. No contingent rent is payable. The cost for the current year amounted to R4 870 944 (2015: R4 841 908).

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**16. Contingencies**

Litigation is in the process against the OPFA relating to a dispute of unfair dismissal by a previous employee. The OPFA's lawyers and management consider the likelihood of the action against the entity being successful as unlikely, and the case should be resolved within the next year.

**17. Related parties****Relationships**

A Sithole	Board Member
H Wilton	Board and Audit committee member
Z Bassa	Board member
F Groepe	Board member
O Makhubela	Board member
J Mogadime	Board and Audit committee member
I Momoniat	Board member
D Msomi	Board and Audit committee member
H Ratshefola	Board member
P J Sutherland	Board and Audit committee member
D Turpin	Board member
Members of key management	Refer to note 18

	2016	2015
<b>Related party balances</b>		
<b>Amounts included in Trade receivable regarding related parties</b>		
Financial Services Board	1 166 077	1 376 984
<b>Related party transactions</b>		
<b>Contributions from the Financial Services Board</b>		
Contributions from the Financial Services Board	(47 136 955)	(43 768 702)
Shared service costs paid to Financial Services Board	3 000 000	2 724 000



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**18. Key management remuneration****Executive management****2016**

	<b>Emoluments</b>	<b>Incentive bonus</b>	<b>Leave commutation</b>	<b>Total</b>
M Lukhaimane, PFA	2 091 915	586 379	246 642	2 924 936
C Raphadana, SAA	1 180 515	87 123	-	1 267 638
C Seabela, SAA	1 083 029	62 243	-	1 145 272
S Mothupi, SAA	1 119 095	73 504	33 832	1 226 431
R Segers, CFO	999 074	165 852	-	1 164 926
T Ramara, HR (Resigned, 29 February 2016)	606 834	-	40 005	646 839
	<b>7 080 462</b>	<b>975 101</b>	<b>320 479</b>	<b>8 376 042</b>

**Executive management****2015**

	<b>Emoluments</b>	<b>Incentive bonus</b>	<b>Leave commutation</b>	<b>Total</b>
M Lukhaimane, PFA	1 928 250	556 154	158 104	2 642 508
C Raphadana, SAA	1 120 151	71 527	-	1 191 678
C Seabela, SAA	1 028 915	63 306	130 576	1 222 797
S Mothupi, SAA	1 063 179	65 772	-	1 128 951
R Segers, CFO	855 241	115 664	-	970 905
T Ramara, HR	550 000	-	-	550 000
	<b>6 545 736</b>	<b>872 423</b>	<b>288 680</b>	<b>7 706 839</b>

Employees of the OPFA are paid on a total cost to company basis, where applicable, salaries include retirement fund contributions, medical aid contributions and travel allowances.

PFA - Pension Funds Adjudicator

SAA - Senior Assistant Adjudicator

CFO - Chief Financial Officer

HR - Human Resources

**Non-executive**

Non-executive members are remunerated by the Financial Services Board.

**19. Change in estimate****Property, plant and equipment**

The useful life of certain property, plant and equipment was reassessed in the current period and management has revised their estimate. The effect of this revision has decreased the depreciation charge for the current period while increased the depreciation charges for future periods by R200 181.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**20. Prior period errors**

During the current year it was identified that in the prior year building service and municipal costs had being incorrectly disclosed under operating lease rentals.

The correction of the error results in adjustments as follows:

	2016	2015
<b>Statement of Financial Performance</b>		
Operating lease rentals	-	(794 774)
Other operating expenses	-	794 774

Employees of the OPFA are paid on a total cost to company basis, where applicable, salaries include retirement fund contributions, medical aid contributions and travel allowances.

PFA - Pension Funds Adjudicator  
SAA - Senior Assistant Adjudicator  
CFO - Chief Financial Officer  
HR - Human Resources

**Non-executive**

Non-executive members are remunerated by the Financial Services Board.

**21. Financial risk management****Financial risk management**

In the course of the OPFA's operations it is exposed to credit, liquidity and market risk. The OPFA has developed a comprehensive risk strategy in order to monitor and control these risks. Internal Audit reports quarterly to the Audit and Risk Management Committee, an independent committee that monitors risks and policies implemented to mitigate risk exposures.

The risk management process relating to each of these risks is discussed under the headings below.

At 31 March 2016	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Trade payables from exchange transactions	1 730 605	-	-	-
At 31 March 2015	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Trade payables from exchange transactions	2 327 997	-	-	-

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**21. Financial risk management, continued****Credit risk**

Credit risk consists mainly of cash and cash equivalents and receivables from exchange and non exchange transactions. The entity only deposits cash with financial institutions approved by National Treasury.

Receivables from non-exchange transactions consist of monies owed by the Financial Services Board. Credit risk is limited as the OPFA is a regulatory body and levies are charged in terms of legislation.

The OPFA investment policy limits investments to A1 rated banks and the Corporation for Public Deposits (CPD). The table below shows the total cash invested with A1 rated banks and CPD. No investment limits were exceeded during the reporting period, and management does not expect any losses from non-performance by these counterparties.

Financial institutions	2016	2015
Standard Bank Limited	1 353 133	1 168 025
Corporation for Public Deposits	215 245	202 063

**Market risk****Interest rate risk**

As the entity has no interest bearing borrowings or significant interest-bearing assets, the entity's income and operating cash flows are substantially independent of changes in market interest rates. Should the balances held in cash and cash equivalents remain constant, the entities income would fluctuate R7 842 (2015: R6 850) per annum for every 50 basis point fluctuation in the prime interest rate.

**Foreign exchange risk**

The entity does not hedge foreign currency exposure.

**Foreign currency exposure at statement of financial position date**

Current liabilities	2016	2015
Trade payables from exchange transactions, USD nil (2015 : USD 2144)	-	25 906
<b>Exchange rates used for conversion of foreign items were:</b>		
USD	-	12.083

The entity reviews its foreign currency exposure, including commitments on an ongoing basis.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**22. Events after the reporting date**

The Accounting Authority is not aware of any matters or circumstances arising since the end of the financial year to the date of this report in respect of matters which would require adjustment to or disclosure in the annual financial statements.

**23. Irregular expenditure**

	2016	2015
Opening balance	1 776 515	1 955
Add: - current year	-	489 734
- prior year	-	1 286 781
Less: Amounts condoned	(1 776 515)	(1 955)
	-	<b>1 776 515</b>

Irregular expenditure incurred relates to legitimate expenditure classified as irregular owing to non-compliance with Supply Chain Management practice. The expenditure relates to remuneration for the conciliator and legal costs mainly towards section 30P appeals. The current year's identified prior year irregular expenditure relates to the period 2012 to 2014.

Details of irregular expenditure condoned	Condoned by (condoning authority)	Amount
Non-compliance with Supply Chain Management practice: National Treasury regulations 16A.6.4, 16A6.3.2 and Practise note 8 of 2007/08.	Board of the Financial Services Board	1 776 515

**24. Reconciliation between budget and cash flow statement**

Reconciliation of budget surplus/deficit with the net cash generated from operating, investing and financing activities:

	2016
<b>Operating activities</b>	
Actual amount as presented in the budget statement	2 620 278
Basis differences	(52 467)
Timing differences	49 058
<b>Net cash flows from operating activities</b>	<b>2 616 869</b>
<b>Investing activities</b>	
Actual amount as presented in the budget statement	(2 467 729)
Basis differences	52 467
<b>Net cash flows from investing activities</b>	<b>(2 415 262)</b>
<b>Net cash generated from operating, investing and financing activities</b>	<b>201 607</b>



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

### 25. Segment information

#### General information

##### Identification of segments

The entity is organised and reports to management on the basis of its core mandated business as set out in the ACT.

The function of the mandate is to dispose of complaints lodged with the entity. Due to the nature and service of the organisation management reviews and evaluates the entity as a whole, as all risks, resources and financial matters of the entity are directed to the delivery of its core mandate.

The entity's operations are in Pretoria, its only office in the country. Although the office services the public of South Africa, its risks and financial costs are limited to its office's location.

It is on this basis that management views the entity as a single segment to which adequate disclosure has been made in these Annual Financial Statements.

### 26. Budget differences

#### Material differences between budget and actual amounts

##### Personnel costs

During the period vacant posts costs exceeded the budgeted vacancy rate while posts which were filled were done so at the lower end of the salary scale below what was budgeted for.

##### Auditors remuneration - external

Due to nature and size of the entity the Auditor General did not perform an interim audit for the current year.

##### Depreciation and amortisation

The underspend relates to budgeted acquisitions planned early on in the year only being acquired and brought into use near the end of the financial year and the impact of delayed procurement of Property, Plant and Equipment as mentioned below.

##### Intangible assets acquisitions

The variance to budgeted amount stems from delays in the installation and configuration of encryption and mobile device protection project by the service provider over year end.

##### Legal fees

Legal fees include costs for filing of determinations, section 30P and labour matters. The cost is dependent on the number and nature of complaints and related labour disputes.

NOTES TO THE ANNUAL FINANCIAL STATEMENTS, CONTINUED

**26. Budget differences, continued**

**Property, plant and equipment**

The variance to budget stems from an Information and Technology Risk Assessment report, which identified the required environmental infrastructure growth areas to address identified risks, only being finalised in last quarter of the year. This delayed the procurement of the equipment.

**Other operating expenses**

The underspend relates to over budget in travel and accommodation costs for the entity's Stakeholder outreach programs, related savings realised from better administrative controls placed over off-site storage and courier costs, external training courses for executives being canceled by service providers and prepaid expenses.

## 2015/2016 – PERFORMANCE INFORMATION

STRATEGIC OBJECTIVE	MEASURABLE OBJECTIVE	MEASURABLE INDICATOR	STRATEGIC PLAN TARGET
<b>1. Dispose of complaints received</b>	To dispose of complaints through determinations, conciliation and settlements	1.1 Number of complaints finalised on the case management system	Case management teams to finalise 80% of complaints within six months of receipt, 95% within nine months of receipt and 100% within eleven months of receipt. A minimum of 320 cases to be disposed per month
	To allocate and resolve complaints received by the New Complaints Unit within the required timelines	1.2 Complaints finalised as out of jurisdiction, and reformulations; complaints allocated within the approved timelines	New Complaints Unit to finalise all matters within 3 months and allocate complaints to the case management teams within the required timelines
		1.3 Administration of case management and adherence to the required timelines	Compliance, monitoring and review of case management system
	Percentage of determinations taken on review to the High Court	1.4 Number of applications as a percentage of the number of determinations issued for the year	Not more than 1% of determinations taken on review
<b>2. Achieve Operational Excellence</b>	To remain within budget, and comply with all regulatory prescripts applicable to the OPFA including the PFMA and Treasury Regulations	Audit opinion	Unqualified audit opinion
	To maintain a proper Supply Chain Management system	Number of audit findings raised by AG/IA on SCM	Unqualified audit opinion
	To ensure that appropriate talent is recruited, developed and retained to support the execution of the PFA's mandate whilst complying with employment legislation and human resource policies	Recruitment of appropriate key staff as and when required	Refer to strategic plan
		Wellness programme implemented as per annual plan	Refer to HR Strategy
		An approved HR strategy and implementation plan	Employer of choice
	To maintain and align ICT systems to support business needs and overall objectives of the OPFA	An approved ICT strategy and implementation plan	Alignment of the ICT plan to the overall OPFA risk management strategy
	Compliance to applicable legislation and governance frameworks	Number of compliance reports prepared per annum	Unqualified audit opinion
	To ensure business continuity in the event of a disaster	An approved BCM Plan/policy and implementation plan	Alignment of the BCM plan to the overall OPFA risk management
<b>3. Effective Stakeholder Relationship</b>	To collaborate and build relationships with stakeholders	An approved stakeholder relationship annual plan	Implement initiatives within the stakeholder management annual plan

ANNUAL TARGET 2015/2016	PERFORMANCE RESULTS 31 MARCH 2016	COMMENTS
Case management teams to finalise 80% of complaints within six months of receipt, 95% within nine months of receipt and 100% within eleven months of receipt. A minimum of 320 cases to be disposed per month	Exceeded minimum number of cases to be disposed per month. In all 12 months the monthly target was met. 3476 determinations finalised, 3 complaints conciliated, 492 complaints deemed out of jurisdiction and 1544 complaints settled. 78.8% of complaints finalised within six months of receipt, 96.75% within nine months of receipt and 99% within eleven months of receipt	Increased monitoring of performance meant that guidance was provided at the earliest possible time. Most of the funds and administrators improved on their turnaround times for lodging responses and the quality of responses, which allowed for seamless processing
3 Months. All matters resolved within three months or allocated to case managements teams as per approved timelines	Achieved	Complaints at the New Complaints Unit were finalised within three months or allocated to case management teams within two working days except in minimal instances where further particulars were required. 2946 complaints were deemed out of jurisdiction, 1250 complaints were closed as reformulations, whilst 16 were duplicates and 243 were abandoned and withdrawn
Quarterly compliance reports	Achieved	Quarterly compliance reports submitted to National Treasury on time.
≤1 percent	Achieved	0.5% determinations were taken on appeal to the High Court in terms of s30P of the Act
Unqualified opinion	Not Achieved	Financially unqualified with findings
Unqualified opinion	Not Achieved.	Financially unqualified with findings
All key posts filled within 3 months	Not Achieved	All vacant key posts were advertised as soon as possible, however suitable candidates could not identified within the three month period and therefore in some instances, readvertisements had to be done
100 percent	Not Achieved. 89.5% of the planned activities were undertaken	The office did not achieve an inter-entity sporting day, and its planned recognition of Spring Day
Strategy and annual plan implemented	Not Achieved. 95% of the planned interventions carried out. Some activities postponed due to vacant positions	The placement of key staff within 3 months was not achieved due to non-suitable candidates being found through the interview processes
100% achievement of milestones within the ICT plan	Not Achieved. 66% milestones completed	Three project completion dates were moved out to 2016/17; the internal audit of the Human Resources Management system incomplete data validation issues; the SMS communication project was delayed based on business readiness to deliver on public expectations and the Implementation of the encryption and mobile device management solution due to poor service delivery of the service provider
4 compliance reports submitted (1 per quarter)	Achieved	Four compliance reports were submitted to National Treasury (One per quarter)
Maintain and comply 100% with the annual BCM Plan	Achieved	Complied 100% with the annual BCM Plan
100% Implementation of approved annual stakeholder management plan	Achieved	Approved annual stakeholder management plan was 100% implemented

[illegible]



## ADMINISTRATION

### Country of incorporation and domicile

Registered office

Postal address

Bankers

Auditors

Telephone

South Africa

Block A; 4th Floor, Riverwalk Office Park

41 Matroosberg Road

Ashlea Gardens, Pretoria, 0181

PO Box 580, Menlyn, 0063

Standard Bank

Auditor General

+27 12 748 4000/346 1738

Fax 086 693 7472

[www.pfa.org.za](http://www.pfa.org.za)

## USEFUL INFORMATION ABOUT OTHER OFFICES

### The Ombudsman for Long-term Insurance

Private Bag x45, Claremont, 7735

Telephone: +27 21 657 5000

Sharecall: 0860 103 236

Fax: +27 21 674 0951

Email: [info@ombud.co.za](mailto:info@ombud.co.za)

### The Credit Ombud

PO Box 805, Pinetown, 2123

Call Centre: 086 166 2837

Fax: 086 674 7414

Email: [ombud@creditombud.org.za](mailto:ombud@creditombud.org.za)

### The Ombud for Financial Service Providers

PO Box 74571, Lynnwoodridge, 0040

Telephone: +27 12 470 9080

Sharecall: 086 032 4766

Fax: +27 12 348 3447

Email: [info@faisombud.co.za](mailto:info@faisombud.co.za)

### The Ombudsman for Short-term Insurance

PO Box 32334, Braamfontein, 2017

Telephone: +27 11 726 8900

Sharecall: 086 726 890

Fax: +27 11 726 5501

Email: [info@osti.co.za](mailto:info@osti.co.za)

### The Financial Services Board

PO Box 35655, Menlo Park, 0102

Toll-free: 0800 110 443 or 0800 202 087

Telephone: +27 12 428 8000

Sharecall: 086 032 4766

Fax: +27 12 346 6941

Email: [info@fsb.co.za](mailto:info@fsb.co.za)

### The Ombudsman for Banking Services

PO Box 87056, Houghton, 2041

Telephone: +27 11 712 1800

Sharecall: 086 080 0900

Fax: +27 11 483 3212

Email: [info@obssa.co.za](mailto:info@obssa.co.za)

### Public Protector

Private Bag x677, Pretoria, 0001

Telephone: +27 12 366 7000

Fax: +27 12 362 3473

Toll Free: 0800 112 040

### The National Consumer Commission

Private Bag 33, Highveld, 0169

Telephone: +27 12 761 3400

Fax: 086 758 4990

Email: [complaints@thencc.org.za](mailto:complaints@thencc.org.za)

### The National Credit Regulator

PO Box 209, Halfway House, Midrand, 1685

Telephone: +27 11 554 2600

Call Centre: 086 062 7627

Fax: +27 11 805 4905

Email: [complaints@ncr.org.za](mailto:complaints@ncr.org.za)

### Motor Industry Ombudsman of South Africa

Suite 156, Private Bag x025, Lynnwood Ridge, 0040

Telephone: 086 116 4672

Fax: 086 630 6141

Email: [info@miosa.co.za](mailto:info@miosa.co.za)

### The Consumer Goods and Services Ombud

Associated House, Bond Street Business Park,

Cnr Bond and Kent, Randburg

Telephone: +27 11 781 2607

Fax: 086 206 1999

Email: [info@cgso.org.za](mailto:info@cgso.org.za)

### Office of Tax Ombud

PO Box 12314, Hatfield, 0028

Telephone: 0800 662 837/+27 12 431 9105

Fax: +27 12 452 5013

Email: [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)

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2015/2016**

OFFICE OF THE PENSION FUNDS ADJUDICATOR

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