



**Manual on Access to Information
held by the
Pension Funds Adjudicator**

1. FUNCTIONS AND STRUCTURE OF THE OFFICE OF THE PENSION FUNDS ADJUDICATOR

The Office of the Pension Funds Adjudicator was established with effect from 1 January 1998 to investigate and determine complaints lodged in terms of the Pension Funds Act, 24 of 1956. This includes complaints, as defined, by and against a provident fund, a retirement annuity fund and a preservation fund.

The Pension Funds Adjudicator is appointed by the Minister of Finance, after consultation with the Financial Services Board. The main object of the Adjudicator is to dispose of complaints lodged in terms of section 30A(3) of the Act in a procedurally fair, economical and expeditious manner.

In addition to the Adjudicator, the Office is staffed by a deputy adjudicator, assistant adjudicators, an informal resolution unit, and administrative and support staff.

Complaint Procedure

1.1. The Complainant - Who can complain to the Adjudicator

In order to lodge a complaint, a complainant must be a member or former member of a pension fund, a beneficiary or former beneficiary of a fund, an employer who participates in the fund, the board of management of a fund or a member of the board or any person who has an interest in the complaint.

1.2. Nature of a complaint – About what may a complaint be

According to the Act, a complaint must relate to the administration of a pension fund, the investment of its assets or the application of its rules and in addition, the complaint must allege one of the following:

- that the fund has made a decision which was either in excess of its powers or an improper exercise of its powers;
- that the complainant has been prejudiced as a result of maladministration by the fund;
- that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or
- that an employer who participates in the fund has not fulfilled its duties in terms of the rules of the fund.

In making such an allegation against the fund, the complainant should set out the facts supporting the allegations and the conclusions drawn from those facts, and attach copies of as many documents relating to the complaint as possible.

1.3. Time limit for lodging complaints

Complaints should be lodged within three years from the date on which the decision was taken or the event occurred against which the complaint is lodged. The Office is, generally speaking, not allowed to investigate a complaint if the event to which it relates occurred more than three years before the complaint was lodged with the office.

1.4. Before a complaint is lodged

Before a complaint is lodged with the Office, it must first be lodged in writing with the fund or the employer, who must then consider the complaint and reply in writing within 30 days of receiving it. If the reply received is unsatisfactory or if the fund or the employer fails to reply within the 30 day time period, a complaint may be lodged with this Office.

1.5. How to submit a complaint to the Adjudicator

Any complaint to the Office must be in writing. Complaints submitted by fax or email are acceptable, provided sufficient detail is supplied and the complaint is signed. Persons visiting the Office may be assisted in completing a complaint form for submission, but staff members will not give any legal advice or enter into any discussions with a person who has not lodged a complaint in writing.

1.6. What should be stated in the complaint to the Adjudicator

A complaint lodged with the Adjudicator should contain at least the following information:

- (i) full personal details, including name, postal address, ID number, as well as phone and fax numbers and email address (if available);
- (ii) the history of employment and membership of the fund concerned, together with the date the complainant joined and left the employer and the fund, as is appropriate;
- (iii) full details of the fund and the employer including name, address, telephone number. Fax number and e-mail addresses should also be given if available;
- (iv) full particulars of the complaint with particular reference to the definition of the complaint as set out above;
- (v) full particulars of the ideal outcome of the complaint;

- (vi) proof that the complaint has been submitted to the fund or the employer;
and
- (vii) a copy of the complaint sent to the fund or the employer together with a copy of any reply received.

The complaint should also include all copies of correspondence regarding the dispute and copies of any relevant documents such as membership certificates, benefit statements and circulars from the fund or employer which have a direct bearing on the dispute.

1.7. What happens to a complaint when the Adjudicator has received it

Once the Office has received written submissions from both the complainant and the pension fund or any other party involved, an Assistant Adjudicator will investigate the complaint and by possibly requesting further information from any of the parties involved. Any further written replies are copied to all the parties so that they can comment.

The Adjudicator will decide on the merits of the complaint, with reference to the relevant rules of the fund and the law. A copy of the decision in a form of a determination or a letter stating the reasons for the particular finding will be forwarded to each of the parties cited in the complaint.

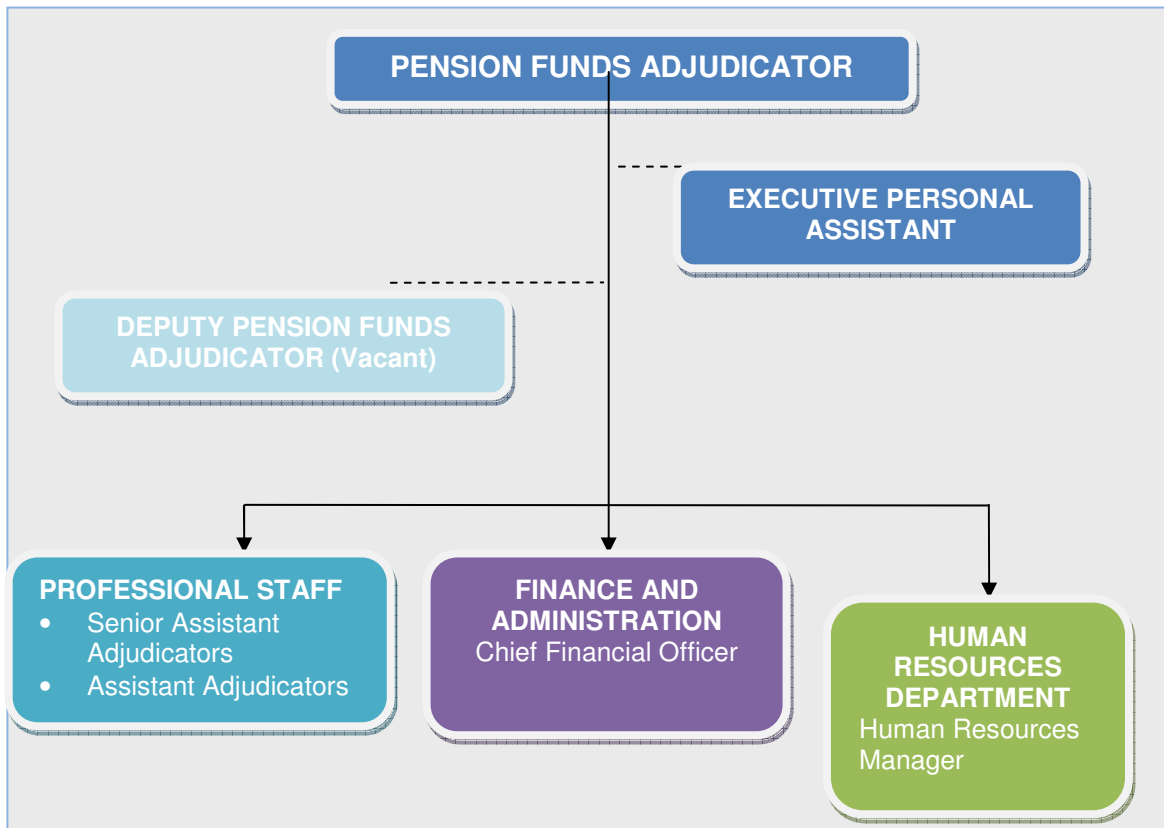
1.8. Remedy if anyone is not satisfied with the Adjudicator's ruling

Any party who is dissatisfied with a determination of the Adjudicator, may within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction for relief. The High Court has the power to consider the merits of the complaint in question and to take new evidence and make any order it deems fit.

1.9. General information

There is no prescribed format that must be followed in setting out a complaint, but a complaint form may be downloaded from www.pfa.org.za this form sets out the minimum information required. It is important that all required information is set out clearly and systematically.

2. SCHEMATIC DIAGRAM OF THE OFFICE OF THE PENSION FUNDS ADJUDICATOR



3. CONTACT DETAILS

Information Officer: The Pension Funds Adjudicator appointed in terms of section 30C.

Physical Address: 4th Floor
Riverwalk Office Park
Block A, 41 Matroosberg Road
Ashlea Gardens
PRETORIA
SOUTH AFRICA 0081

Postal Address: P.O. Box 580, **MENLYN**, 0063

Telephone No: 012 346 1738

Fax No: 086 693 7472

E-mail: enquiries@pfa.org.za

Website: www.pfa.org.za

4. GUIDE ON HOW TO USE THE ACT

The South African Human Rights Commission (SAHRC) is responsible for developing a guide in each of the country's eleven languages, with information on how to use the Act. This guide is available on the SAHRC website.

Any information or queries related thereto should be directed to:

The South African Human Rights Commission
The Research and Document Department
PAIA Unit
Private Bag 2700
HOUGHTON
2041

Telephone: 011 484 8300

Fax: 011 484 1360

Website: www.sahrc.org.za

E-mail: PAIA@sahrc.org.za

**5. ACCESS TO THE RECORDS HELD BY THE OFFICE OF THE PENSION FUNDS
ADJUDICATOR**

The following records are held by the Office of the Pension Funds Adjudicator and are available to any person without such person having to request access in terms of the Act.

General Publications:

The Annual Reports of the Office of the Pension Funds Adjudicator

Determinations issued by the Adjudicator in terms of section 30M of the Act:

All reportable determinations issued by the Pension Funds Adjudicator in terms of section 30M of the Act.

Other documents held by the Office of the Pension Funds Adjudicator are subject to confidentiality and may not be disclosed without the consent of the relevant parties involved in the matter. Such documents include complaints submitted by the complainants and submissions advanced by respondents in response to complaints.

6. THE REQUEST PROCEDURES

A requester must be given access to a record of a public body if the requester complies with the following:

- The requester complies with all the procedural requirements in the Act relating to the request for access to that record; and
- Access to that record is not refused on any ground of refusal mentioned in the Act.

Nature of the request:

- A requester must use Form A, printed in the Government Gazette [Govt. Notice R187-15 February 2002].
- The requester must also indicate if the request is for a copy of the record or if the requester wants to come in and look at the record at the office of the PFA. Alternatively if the record is not a document, it can be viewed in the requested form, where possible [s 29(2)].
- If a requester asks for access in a particular form he/she should get access in the manner that has been asked for. This is unless doing so would interfere

unreasonably with the running of the Office, or damage the record, or infringe a copyright not owned by the state. If for practical reasons access cannot be given in the required form but in an alternate manner, then the fee must be calculated according to the way that the requester first asked for it [s 29(3) and (4)].

- If, in addition to a written reply to a request for the record, the requester wants to be told about the decision in any other way, e.g. by telephone, this must be indicated [s 18(2)(e)].
- If a requester is asking for the information on behalf of somebody else, the capacity in which the request is being made should be indicated [s 18(2)(f)].
- If a requester is unable to read or write, or has a disability, he/she can make the request for the record orally. The information officer must then fill in the form on behalf of such a requester and give him/her a copy [s 18(3)].

Two types of fees must be paid in terms of the Act, being the request fees and the access fee (s 22):

A requester who seeks access to a record containing personal information about that requester is not required to pay the request fee. Every other requester, who is not a personal requester, must pay the required request fee:

- The information officer must notify the requester (other than a personal requester) of the requirement to pay the prescribed fee (if any) before further processing the request.
- The request fee payable to public bodies is R39.90 (including VAT). The requester may lodge an internal appeal, where appropriate, or an application to the court against the tender or payment of the request fee.

- After the information officer has made a decision on the request the requester must be notified of this decision in the way in which the requester wanted to be notified.
- If the request is granted then a further access fee must be paid for the search, preparation, reproduction and for any time that has exceeded the prescribed hours to search and prepare the record for disclosure.

7. SERVICES AVAILABLE TO THE MEMBERS OF PUBLIC

The Office of the Pension Funds Adjudicator has a website wherein all the reportable determinations of the Adjudicator issued in terms of section 30M of the Act, Annual Reports of the Pension Funds Adjudicator, specimen complaints and various speeches by the Adjudicator are available.