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THE PENSION FUNDS ADJUDICATOR

What you need to know about lodging a complaint

1. What the Adjudicator does

The office of the Pension Funds Adjudicator was established with effect from 1 January 1998 to investigate and decide complaints lodged in terms of the Pension Funds Act. The word Pension Fund in the Act includes a Provident Fund, and Retirement Annuity Fund.

2. 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, or an employer who participates in a fund. In addition, the Board of Management of a fund, or a member of the board can also lodge a complaint. However, the Pension Funds Adjudicator does not have jurisdiction over funds to which the State contributes financially, such as the Government Employees Pension Funds, the social assistance pension scheme and the AIPF, as these are not required to register under the Pension Funds Act. Your employer's personnel department or the Principal Officer of your fund will be able to tell you if your fund is registered in terms of the Act.

3. What you can complain about

According to the Act, your complaint must relate to the administration of a pension fund, the investment of its assets, or the application of its rules. In addition to this, the complaint must allege one or more of the following:

- that the fund has made a decision outside its powers

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

- 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, you should set out the facts supporting the allegation and the conclusions you have drawn from those facts. In other words, state what actually has happened and why you feel that such events amount to maladministration, excess of powers, a dispute of law or fact, or dereliction of duty on behalf of the employer.

4. When you can complain to the Adjudicator

The Act limits the period of time within which you can submit your complaint. The Adjudicator is not allowed to investigate a complaint if the event to which it relates

occurred more than three years before the complaint was lodged with him, unless he can find good cause as to why this period should be extended. Only if you have a very strong case and you are able to show very good reasons why you have not submitted your complaint within the three-year prescription period will the Adjudicator be able to consider an extension. If, for example, you were not aware of the existence of a benefit, this could be grounds for an extension. But you would have to lodge your complaint within three years of becoming aware of the benefit.

5. What you must do before you complain to the Adjudicator

Before you complain to the Adjudicator you must first lodge your complaint in writing with the fund or your employer. The fund or employer must then consider your complaint and reply to you in writing within 30 days of receiving it. You can only submit your complaint to the Adjudicator if you are not satisfied with the reply you get, or if the fund or employer fails to reply within 30 days after receiving your complaint. Disputes can often be resolved amicably among the parties without getting the Adjudicator involved at all. In fact the Pension Funds Act encourages this. So it is important that you first discuss your complaint with your employer and the fund,

perhaps through the fund administrator, to see if they can help you resolve the problem.

6. How you must submit your complaint to the Adjudicator

Any complaint to the Adjudicator must be **in writing** (typed if possible). The Pension Funds Adjudicator will not accept complaints on the telephone or in person at his office, and he will not enter into discussions with a person who has not lodged a complaint in writing.

7. What you must tell the Adjudicator in your complaint

Complaints lodged with the Adjudicator must contain at least the following information:

- (i) Full personal details, including your name, postal address, I.D. number, as well as phone and fax numbers and e-mail address if you have these.
- (ii) The history of your employment and membership of the fund concerned, together with the date you joined and left the employer and the fund, as appropriate.
- (iii) Full details of the fund and the employer including name, address, telephone number. Fax number and e-mail address should also be given if you have them.
- (iv) Full particulars of the complaint with particular reference to the definition of a complaint as set out in **3.** above.
- (v) Full particulars of the relief you want the Adjudicator to order. How can he resolve the problem that has caused you to complain?
- (vi) Proof that the complaint has been submitted to the fund or the employer. This proof should usually take the form of a registered letter slip or a fax confirmation sheet, for example.
- (vii) A copy of the complaint sent to the fund or employer, together with a copy of any reply received from them, should also be sent to the Adjudicator.

The complaint should also include copies of all correspondence you have had regarding the dispute and copies of any relevant documents such as membership certificates, benefit

statements and circulars from the fund or the employer that have a direct bearing on the complaint. **A simple information checklist is attached to assist you in this respect. Please note that your complaint should be detailed but should stick rigidly to the issues of concern. Incidental comments and asides do nothing to enhance your case, and indeed may only serve to confuse the issue. Rather stick to the facts and only include information relating directly to the specific matter you are complaining about. And do not forget to tell the Adjudicator what remedy you are seeking.** That is, what you want him to do to rectify the matter. **It is important that the Adjudicator gets a clear picture of what is at stake. Remember the Adjudicator knows nothing other than what you tell him.**

8. What happens to your complaint when the Adjudicator has received it.

Once the Adjudicator has received written submissions from both the complainant and the pension fund, and any other party involved, an assistant adjudicator will investigate the complaint by phoning or writing to the fund/employer or you for more information if necessary. Any further written replies are copied to all the parties so that they can comment.

The Adjudicator will determine and apply the relevant law to the facts of your case and make a decision.

You will receive the decision in the form of a determination or a letter stating reasons for the finding.

The determinations of the Pension Funds Adjudicator can be taken on appeal to the High Court within six weeks of the decision being made.

9. General Information

There is no charge for bringing a complaint to the Pension Funds Adjudicator.

There is no prescribed format that you must follow in setting out your complaint. It is, however, important that all the required information is set out clearly and systematically, as if you are telling the story for the very first time.

An example of a suitable way to set out your complaint is attached. But remember, **it is only a guide.** You must write out all the facts about your complaint and provide all your own personal and employment history, but you can copy the style and layout of the example to help you.

Important: your complaint must be submitted in writing (preferably typed) and must first be lodged with the **fund** or the **employer**, before it can be investigated by the Adjudicator.

The Pension Funds Adjudicator's contact details are:

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Fax: 086 693 7472
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HOW TO WRITE YOUR COMPLAINT

This is an example to show you how to write your complaint. It will help you to make sure

we get all the information we need. Then we can deal with your complaint faster.

You can copy the way the complaint is written. ***But you must change everything in the***

dotted blocks and put your own details in, as well as the details of your fund and your

employer. If there is something in the example that does not apply to you, leave it out.

You are the complainant. The pension fund or the employer are the respondents. So your

complaint is against the respondents.

In the complaint between:

Your name Complainant

and

The Pension Fund First Respondent

The employer Second Respondent

(the employer – only if necessary)

COMPLAINT IN TERMS OF SECTION 30A OF THE PENSIONFUNDS ACT 24 OF 1956

1. I am the complainant. My name is I am an adultmale, of (*your address*) and my telephone number is
2. The first respondent is (*your pension fund*), whoseAddress is (*your fund's address*). ThePrincipal Officer of the pension fund is (*principal officer's name*).
The
telephone and fax numbers of the pension fund are
3. The second respondent is (*employer's name*), a companywith its head office at (*employer's address*). The telephonenumber of the second respondent are
4. I sent a written complaint to the pension fund / employer interms of Section 30A (1) of the Act on the (*enter date*). Ienclose a copy of that complaint marked "A".

The first respondent wrote back on (*enter date*) to say (*tell us what they said*).I enclose a copy of the reply marked "B",

OR

5. I received no further information or reply from thefirst respondent and as the respondent has not replied to thecomplaint within 30 days, the Pension Funds Adjudicator nowhas jurisdiction to deal with this matter.

PARTICULARS OF THE COMPLAINT

Under this heading you should tell your story.

The law says you can complain about

- *how the pension fund is run*
- *how the money is invested*
- *the rules of the pension fund*

You must tell us if you think

- *the pension fund did something it was not allowed to do*
- *you lost money because of something the pension fund did*

- you disagree with the pension fund about something that happened or about the rules
- the employer did not carry out its pension fund duties

You must tell us **what happened** and also **why** you think the pension fund did something it was not supposed to do, or why you think the pension fund made you lose money, or what you disagree with the pension fund about, or why you think the employer did not carry out its duties.

You must give us as many details as possible about the case. Remember, we have never heard of you before. We know absolutely nothing about you or your complaint. Please tell us exactly what happened from beginning to end.

We need all the facts.

When you tell the story you must give us the history of your work with that employer and membership of the pension fund.

For example:

1. I started work for the second respondent on the (date) as a messenger. I retired on the (date). All the time I worked for the second respondent I was a member of the pension fund. I made regular contributions for my pension by deduction from my wages / salary.

Or alternatively you might say:

2. I purchased an annuity with the Retirement Annuity Fund, administered by (name of insurance company) on (date) and I contributed (amount) monthly to this. At the date I retired, I decided to take a 1/3 cash lump sum. I took the rest of my retirement benefit as a monthly pension, and so on.

Write down all the background. **Then get on to the problem.**

Remember: WE KNOW NOTHING ABOUT YOUR COMPLAINT. TELL US EVERYTHING WE NEED TO KNOW, AND SEND US COPIES OF ALL DOCUMENTS AND CORRESPONDENCE YOU HAVE HAD CONCERNING YOUR

COMPLAINT.

When you have given us the facts you must give us your argument about why you think the fund was wrong. Tell us why you think you are right.

RELIEF

Many complainants forget to tell us what they think would help or solve the problem.

*This is called **relief**. Please write down what you want the Pension Funds Adjudicator to do, or what needs to be done to solve your problem.*

End the complaint like this:

Signed at (your town) on this day of 2002.

Complainant:

Address:

.....

.....

Tel No:

Fax No:

REMEMBER TO SEND A COPY OF THIS COMPLAINT TO THE RESPONDENTS SO THAT THEY HAVE THE SAME DOCUMENTS THAT YOU SENT US.

THE PENSION FUNDS ADJUDICATOR

Complaint Information Checklist

REMEMBER : You must complain in writing to the fund or employer concerned at least 30 days

before you can lodge your complaint with the Adjudicator.

When you submit your complaint to the Pension Funds Adjudicator, please ensure that all the

following information is included. **(Items marked * are only required if relevant to the complaint)**

Your Details **(the complainant)** Name

ID Number

Address

Phone Number

Fax Number (**optional**)

E-mail address (**optional**)

Are you a Member or a Beneficiary or Other Complainant (**please state**)
(If you are a beneficiary, please give the name of the member whose beneficiary you are)

Employment Details Full Name and Address of Employer

Phone Number

Fax Number (**optional**)

E-mail address (**optional**)

When Employed Date From To

(if still employed there, please state)

Details of Fund Name of Fund

Address

Name of Principal Officer (**if known**)

Phone Number

Fax Number (**optional**)

E-mail address (**optional**)

Type of Fund Pension Fund, Provident Fund, Preservation Fund,
 Retirement Annuity Fund, or other (**please state**)

Please enclose Proof of sending complaint to Fund/Employer

Copy of complaint letter sent

Copy of any reply received

Copy of relevant documents

eg *membership certificate

*benefit statement

*payslip showing pension deductions

*documents concerning the complaint

*other correspondence with fund/employer

Please remember to give full but concise details of your complaint, and tell the Adjudicator what you would like him to do to rectify the situation.

When you send your complaint to the Adjudicator, also send an identical copy to the respondents, so that they know you have lodged a complaint with us and can see exactly what the complaint says.