

Hard work, fair play

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Pahallo Thekiso

Pension Funds Adjudicator Muvhango Lukhaimane (centre) discusses a case with assistant adjudicator Paul Mogashoa and administrative assistant Gomotsegang Magaseng at their offices in Gauteng.

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The pension lawyer fraternity uses words like “driven” and “hard-working” to describe Muvhango Lukhaimane, the fifth Pension Funds Adjudicator. But they also say she is “warm”, “friendly” and “personable”.

Bringing to the job an unusual blend of legal and human resources skills and a no-nonsense approach to work, Lukhaimane has proved herself worthy of the job in the eyes of the Finance Minister, Pravin Gordhan. He appointed her deputy adjudicator in June 2012, but after just one year in office promoted her to the post of adjudicator.

Established by the Pension Funds Act, the adjudicator’s office is tasked with cost-effectively and speedily resolving complaints about retirement funds.

Late last year, just 15 months after taking over, Lukhaimane put out her second annual report, saying that the backlog of complaints cases that had long bedevilled the office had been cleared. This backlog – 10 000 at its peak – had its roots in a rapidly increasing complaint load and the office’s lack of capacity to deal with it in earlier years.

Although her predecessors had begun to chip away at the backlog, Lukhaimane’s strong organisational skills enabled the office finally to crack it. She says she was motivated by the negative

effect it was having on the ability of complainants and other stakeholders to view the complaints resolution process run by her office as one that was procedurally fair and low-cost. She says the words of the chairperson of the Financial Services Board (FSB), Abel Sithole, who said, in relation to the backlog, that “justice delayed is justice denied”, weighed on her mind.

On April 1, 2012, the adjudicator’s office had 8 330 cases open. By the end of 2012, the office had received another 5 161 complaints.

The numbers were daunting, but the office upped its game in October 2012 by introducing a customised interactive case management system, which has reduced the administrative burden and which provides a better view of the status of cases.

At the same time, the office’s staff, divided into three teams, increased their output. The new complaints division upped the cases it resolved by 22 percent, the conciliation unit increased its case output by 52 percent, and the adjudication unit increased its output by 93 percent.

The adjudicator’s annual report notes that the complaints management process has been reviewed, timescales have been reduced and line managers are expected to assess correspondence at a much earlier stage than before.

In total, 8 127 complaints were dealt with in the 12 months to the end of March last year – an increase of 65 percent on the number dealt with in the previous year. In addition, the adjudicator’s staff spent considerable time establishing that more than 2 600 cases classified as open, should, in fact, have been closed. By March 31 last year, only 2 710 cases were still open, of which around 80 were more than a year old. New cases are now being resolved, on average, in seven months.

When the time came to assess the office’s progress, Lukhaimane says she could not believe the backlog had all but been cleared. She made her staff check to ensure it was indeed the case.

Though she may be a hard taskmaster, she is not unapproachable, and despite her strict work ethic has time for anyone who knocks on her door.

But don’t expect her to stray from her legal duty, which means that if a determination is what is required, no excuses will prevent it from being issued.

Lukhaimane grew up in Venda and began her career there by completing a BLuris at the University of Venda.

In 1995, she returned to the University of Venda, where she took her first job, as a law lecturer. While lecturing, Lukhaimane studied part-time and obtained a Master’s in constitutional and labour law from the University of South Africa, writing her thesis on whether the Constitution protects the right to die.

She also took a postgraduate diploma in management studies, including a module on human resources management, through the Management College of Southern Africa via distance learning from Buckinghamshire Chilterns University College.

In 2000, Lukhaimane accepted a post as a research consultant at Sanlam Employee Benefits, and then served as a legal adviser at Sanlam until June 2002. At the same time, she completed the University of the Free State’s Postgraduate Diploma in Financial Planning, the diploma you need to call yourself a Certified Financial Planner. Between July 2002 and June 2003, she worked at Liberty Personal Benefits as a legal consultant.

In 2003, Lukhaimane obtained a certificate in compliance management from the University of Cape Town in conjunction with the Compliance Institute of South Africa.

In 2003, she was appointed principal officer for the Eskom Pension & Provident Fund, and two years later she was headhunted by a former Sanlam boss to take on the role of general manager in charge of research into conditions of service at the State Security Agency. In June 2007, she became general manager for human resources at the agency.

In June 2011, Lukhaimane accepted the role of chairperson of the Intelligence Services Council at the Ministry of State Security, advising the minister on human resources policies.

To add to her already long list of qualifications, she completed an MBA at Wits Business School in June 2013.

Lukhaimane, who is 41, has three children. The youngest, an 18-year-old son, Izzy, wrote matric last year. Her daughter, Pinkie, is 23, and her elder son, Khathu, is 25. They still live at home – in Fourways, Johannesburg – but Lukhaimane says: “I tell them, I have known you for more than half my life. You guys need to leave now.”

Lukhaimane has never married and describes bringing up three children by herself as “tough”. But, she says, she is one of five sisters, and “it helps to have a few good friends and family”.

Personal Finance: Why did the adjudicator’s office have such a large backlog of complaints for so long?

Muvhango Lukhaimane: There was no performance management. No one was saying to employees: “I am paying you to do certain things within a certain time and in a certain way.”

I know what every person does. When you don’t know what the people you are managing are doing, you do not know how long they need to complete the job. Whenever somebody goes on leave or goes on a course, I fill in for them, and then I know exactly how long they need to do everything.

We needed a plan, and when the staff realised that there would not be any relenting on the backlog, we tackled it and slowly it went down.

At a certain point, we converted a boardroom into a war room, with charts on the walls showing what was due and what needed to be done.

Previously, employees could more or less dictate what they wanted. Now, the board of the adjudicator’s office – the same board as the one that oversees the FSB – says what they want and I don’t go to them with a thousand excuses. So we have a clear idea of what we have to do.

Do you think the success you have had in tackling the backlog is a result of the skills you learnt in your human resources roles?

Yes. Had I not been a human resources manager, I would not have been able to make those changes. I have told the staff that no [complainant] must escalate a complaint to me saying they called or emailed and no one from the office returned the call or answered the email. The staff know that if they receive calls or emails, they must deal with them. If they then need to tell me anything, they must.

We have somebody helping us to develop a culture that can outlive me, and we are deciding as an organisation how and why we want to do certain things. That is the benefit of having a human resources background.

It has transformed the office. Everybody's job has changed; everybody is doing more than they were before. I think they beat themselves down before and thought they couldn't do it. Usually, with an office turnaround like this, half the staff would have left and new people would have come in, but 85 percent of the staff are still here. They do not have to work long hours, but professionals cannot expect to work from 8am to 4pm. If you were an attorney, for example, and had a client who needed to apply for bail at 10pm, you would have to help them.

Many people in the office are new to the world of work. They think work is not supposed to be tough, but it is. You are supposed to feel you are giving your pound of flesh.

Does your office have enough staff?

There is more than enough staff. We used to budget for relief staff when someone went on maternity leave, but now we don't need to do that.

The inflow of cases has not gone down; it has stayed the same. But the problem was that the staff were overwhelmed by the backlog. That has now been cleared. There are some old cases on the system that we could not find documentation for and I did not want to just close them, so we have contacted the complainants once more to ascertain whether they received an outcome. One staff member is working on the backlog and everyone else is doing current cases.

We have introduced many improvements and we are now doing a lot of work that we had been outsourcing. We have restructured into three teams so that each line manager manages an integrated team that deals with a complaint from receipt to determination or referral. The manager can say what is required to deal with a complaint and can write a specific letter, rather than sending out a standard one.

At the moment, you are the only person who can sign off determinations. Do you need a deputy who can stand in for you?

The office has embarked on a succession plan and is upskilling its staff so that they can easily get into more senior positions and also assist with the general management of the office, as the structure is relatively flat. While it is not good not to have a deputy, especially as one needs to recharge from time to time, from the perspective of the workload it is not necessary. I only take time off when I can in-between [high-workload periods]. But the office needs the comfort of knowing that if the adjudicator is not there, there are people who can do the work I do – hence the succession planning.

What is your typical day like? Do you spend most of your time on determinations or in a managerial role?

On a Monday, I'm usually at the office at six in the morning, because it is my day off from the gym. On other days, I am there between 7.30am and 8am, because I go to the gym first.

I start by doing an update of the work I did the day before. I log into the case management system to upload the determinations that were sent out the day before.

I schedule meetings for between 9am and 11am and between 2pm and 4pm.

Determinations drafted by the staff come in at 9am, 11am and 2pm. I go through them before the end of the day. I never have work flowing over into the next day.

I send them all back for corrections. Sometimes there are minor corrections; at other times, there needs to be a review of the legal principles.

I send feedback by email. I send the line managers emails saying, for example, that something should not have come to my office in the state that it did, and I send emails saying well done.

Then I do office administration for the human resources manager, the chief financial officer or the information technology manager.

During the day, I walk around the office to see what the staff are doing, and if I see something I do not like, I tell them. I may not see all of the staff each day, but I see them all at least every second day.

If I walk into the reception at the adjudicator's offices and there is someone sitting there, I will ask them if they have been attended to. Now the employees know that they can't leave someone sitting in reception without attending to them.

Do you spend a lot of your time working on determinations? Do you often need to research the legal principles involved in the cases?

A lot of the time the determinations involve basic legal principles, and only occasionally is there something new or very complicated. I read through every page of the determinations and even the source documents.

The Pension Funds Act and the rules of funds are very detailed about what should be done. About 60 percent of the cases concern withdrawal benefits – members complain about not receiving a benefit or not getting the benefit that they expected.

Do you think good retirement fund trustees are a scarce resource?

Trustees delegate too much of their responsibilities to their funds' administrators and other service providers. I don't think they fully invest in what they are supposed to be doing. Another problem is that trustees tend to rely on their own life experience when, for example, distributing death benefits, and tend not to take the facts of the case into account.

Is there any way of fixing that?

There must be investment in the training of trustees, and training should be mandatory for trustees. A trustee should be able to ask the right questions.

If they do not know what questions to ask, they should not be on the board. One of the problems is the high turnover of trustees, especially member trustees due to changing employment, but trustees must be elected.

If experience and the training of trustees is a problem, is it worthwhile having member-elected trustees on boards of retirement funds?

Yes, because members are more likely to trust fellow employees than employer trustees or professional trustees. In all the retirement funds where things have gone wrong, the employers have disengaged from the affairs of the fund, even though the fund exists as a result of contributions taken from employees' salaries.

Your office's latest annual report notes that, at the start of 2012, complaints against the Private Sector Security Provident Fund made up 60 percent of all complaints, and by April

2013 this had declined to a third of the complaints. The fund had been plagued by the failure of employers to pay over contributions and problems caused by members staying with the fund for only a short period. You described the number of complaints to your office as “untenable”, saying that it was “unacceptable that a regulatory and compliance failure by the fund and its administrator is preventing [your office] from engaging in other value-adding activities for the benefit of the pension funds industry as a whole”. How should a fund like this be dealt with?

I do not want to pronounce on what the FSB should be doing about this fund. It is frustrating. When you think a problem has been solved, another complaint reveals another thing that is going wrong in the fund. I think the board of trustees and the administrator are really struggling.

I recently referred to the FSB a determination in a case in which an employer claimed his employees were beaten up by members of the fund who had not received withdrawal benefits from the fund. The employer said it had paid over the members' contributions. But the fund is in disarray and is unable to account for the contributions received. It gives certificates saying that employers are up to date, but they have allocation contributions only to June 2008. It is a real problem.

Also, the fund knows there is a determination that states that all employers in the sector must belong to the fund. If it is aware that there are employers who have not registered, it should report them.

I think there are enough teeth in current regulation. The fund must just get the message.

The Financial Services Laws General Amendment Bill, which is expected to be promulgated soon, proposes that controlling shareholders, members of close corporations, company managing directors, trustees and partners be held personally liable for an employer's failure to pay contributions to a pension fund. Do you think this will help?

Maybe it will make employers pay, because it is theft not to pay over contributions. It wouldn't be so bad if an employer was not paying its own contributions, but often they are deducting contributions from their employees and keeping the money. That is theft. The affected funds must go to the police.

In a recent controversial ruling, you first held four troubled umbrella funds liable and then the former trustees personally liable for R20 million in fees for the reconstruction of members' records. The reconstruction was ordered by the funds' new administrator, Aon, after it took over the business of Dynam-ique Consultants & Actuaries. Why did you find the trustees personally liable?

This kind of thing is unacceptable. Dynam-ique was running the umbrella fund and some of the trustees were employed by Dynam-ique. The trustees should have been monitoring the administration contract properly. The Act holds them personally responsible. It is unfair, unjust and should be unlawful for people entrusted with managing other people's life savings to walk away scot-free in the face of such wrongdoing and peddle their trade elsewhere with no consequences.

The trustees accepted a settlement payment from Dynam-ique agreeing not to pursue further compensation, but they were supposed to be watching the contract. Also, they let their fidelity assurance lapse, which was wrong.

The trustees have appealed my determination. The adjudicator's office cannot defend cases that are taken on review. It is very sad. Often, the complainant does not have the money to defend the case. There needs to be some kind of change in legislation to address this. There needs to be a cheaper review system.

Do you know if your orders are carried out, and are you worried about a lack of enforcement?

We are worried about the enforcement of our orders and have raised this with the Deputy Finance Minister, Nhlanhla Nene. But there is nothing we can do. We do not have an enforcement arm. If you go to the sheriff to ask him to carry out an order, he will say he has other big criminal cases in which to serve papers.

You commented in your annual report on your concerns about complaints relating to causal event charges imposed by life assurers when retirement annuity members make their policies paid up or transfer their savings to other service providers. You said you hoped that the Treating Customers Fairly (TCF) initiative will, to a large extent, eradicate these penalties, but you also recently referred a complaint about a penalty to the FSB for further investigation and possible legislative changes. Do you think there is a need for legislative changes over and above the TCF principles?

Ultimately, business understands legislation. Since the Statement of Intent, which bound life assurers to maximum penalties for causal events, it is clear that the insurance companies are not going to reform voluntarily, and, unfortunately, this is to the detriment of society as a whole. There is a lack of confidence in the retirement funds industry that is driven largely by a lack of transparency about costs and governance shortcomings. TCF principles are going to assist a great deal, but from what our office has experienced, business understands legislation better than just plain fair play.

Do you leave the office at a reasonable hour every day?

When everything depends on me, then I do. But sometimes, if an employee hasn't finished a task and I want it to be finished, I will stay. Every Monday we are up to date. If we are not done by Friday, I wake up at 4am on a Saturday and finish before I go to gym at 7am. My family is usually asleep at that hour and they resent me working at home.

I manage to cook at home three to four times a week, so I guess I am leaving at a reasonable time.

I use the Gautrain at least three times a week to commute from the office in Pretoria to my home in Fourways in Johannesburg. And I manage to do some work on the train. I also read newspapers.

Although my work is up to date, I do sometimes neglect to do things for myself or my kids until I absolutely have to. For example, when I travelled to the Institute of Retirement Funds conference [in September 2013], somebody bumped my car in the car park at Oliver Tambo Airport. I reported the accident, but I left calling the insurance company because I knew I had 30 days to do it. But if it is someone else's stuff, then I am motivated to do it.

What do you do on weekends?

I rest with my family and friends. I have friends I have made over the years – from university. I do not have friends in the financial services industry as such.