



# The Quarterly DIGEST

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Ms Muvhango Lukhaimane,  
Pension Funds Adjudicator



## From the Adjudicator's desk

*As at the end of the 2024/25 financial year, the OPFA had received 10 331 complaints. There was a marked increase in the six months from October 2024 as complaints triggered by the implementation of the two-pot retirement system came through.*

These were not necessarily two-pot retirement system-related complaints but complaints due to information shared by funds ahead of the two-pot retirement system implementation e.g. fund credit not commensurate with deductions over the years, outstanding contributions etc.

The implementation plan put in place by the OPFA worked seamlessly. Queries were handled efficiently, redirected to funds/administrators and by 31 March 2025, the process for handling such queries had been integrated into the day-to-day management of complaints and the two temporary employees contracted to deal with enquiries, released.

At a glance, the OPFA was able to dispose of complaints within the six-month period agreed to in the annual performance plan.

The performance would have been more pronounced had the automated process to dispose of PSSPF-related complaints been implemented immediately upon approval.

In addition, with the ever-changing performance environment, a change management process is underway to ensure that staff adapt to changes quickly whilst maintaining the requisite performance. The aim is also to provide for staff needs that will result in a well-balanced lifestyle that always prioritizes well-being and performance.

It was also good to reconnect personally at the various industry events and share ideas aimed at improving the experience of our stakeholders. The release of the FSCA's Complaints Management Industry Review Report on financial institutions' complaints management processes was sobering indeed, ranking retirement funds efforts at dealing with complaints least favourable. It is for funds and administrators to review their processes and implement measures aimed at improving this situation.

We should all work together to enhance members' experience and engender trust in the retirement system.

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**In Duplum Rule Applies to Section 13A(7) of the Pension Funds Act**



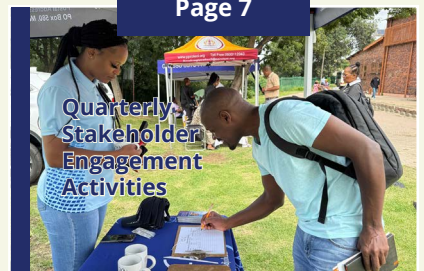
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## ***In Duplum* Rule Applies to Section 13A(7) of the Pension Funds Act**

*Nondumiso Ntshangase, Senior Legal Advisor*

On 18 March 2025, the Eastern Cape High Court, Makhanda issued a ruling in the matter of *Blue Crane Route Municipality v Municipal Workers Retirement Fund and Another (1827/2024) [2025] ZAECMKHC 28* confirming the application of the *in duplum* rule to interest accrued in terms of section 13A (7) of the Pension Funds Act ("PFA"). This ruling which was delivered by a full Court provides direction to the retirement fund industry in applying the *in duplum* rule. The *in duplum* rule provides as follows:



Arrear interest stops accruing when the sum of the unpaid interest equals the extent of the outstanding capital.

### **Background information**

The Municipal Workers Retirement Fund ("Fund") obtained a default judgment against Blue Crane Route Municipality ("Municipality") for failing to deduct and remit contributions between 2007 and 2013. The Court directed the Municipality to pay R3 805 608.68 (capital amount), along with interest calculated in terms of section 13A(7) of the PFA.

Subsequently, the Fund issued a Warrant of Execution reflecting a total amount of R30 052 166.09, comprising the capital and interest.

In response, the Municipality paid the capital amount and tendered R8 450 751.19 in interest. It then urgently obtained an order to stay the execution, pending its application to set aside the writ and declare that the interest payable includes post-judgment interest but remains subject to the *in duplum* rule.

### **Application of the *in duplum* rule**

The Court explained the foundation of the *in duplum* rule and its underlying public policy considerations. It emphasised that its purpose is to permit a creditor to recover double the capital while seeking to alleviate the debtor's plight.

The Fund contended that the rule applies solely to contractual debts. However, the Court rejected this argument, and held that neither the nature of the cause of action nor the identity of the debtor affects the application of the *in duplum* rule. In addition, the Court clarified that the interest rate at which the debt accrues is irrelevant in determining the applicability of the rule. The Court stated that the rule applies broadly to any "debt," including statutory obligations such as the amount owed by the Municipality in this case. Once interest becomes payable, the rule is triggered.

### **Does the PFA exclude the rule?**

In respect of whether the PFA excludes the application of the rule, the Court held as follows:

[11] The Fund's suggestion that the PFA must be interpreted to exclude the rule is equally untenable. The established rule of interpretation is that a statutory provision should not be interpreted to alter the common law more than is necessary unless the intention to do so is clearly reflected in the enactment, whether expressly or by necessary implication: '[I]t is a sound rule to construe a statute in conformity with the common law, save where and insofar as the statute itself evidences a plain intention on the part of the Legislature to alter the common law. In the latter case the presumption is that the Legislature did not intend to modify the common law to any extent greater than is provided in express terms or is a necessary inference from the provisions of the enactment.'

[12] It is always presumed that statute law does not alter the existing law more than is necessary. There is no reference to the rule in the PFA and no express wording to support the contention that the legislature intended to exclude the rule when interest is payable on late contributions to a pension fund organisation. On my reading, this is also not to be implied simply because the PFA provides that interest is payable 'from the first day following the expiration of the period in respect of which such amounts were payable...'. The focus of that subsection is on the date from which interest accrues, rather than necessarily implying deviation from the rule. Read individually or cumulatively, the provisions of the PFA dealing with matters such as the obligation to pay contributions, the time for payment, date of commencement of interest, the prescribed rate and personal liability for compliance, cannot be read to evince an express or implicit intention to alter the applicability of the rule in the present circumstances. [Own emphasis]

The Court determined that the interpretation which applies the *in duplum* rule is the most practical, sensible, and business-like. It emphasised that construing the PFA

in line with the Fund's argument would lead to oppressive consequences for the Municipality, who would be required to pay interest seven times greater than the capital amount. Furthermore, the Court noted that the prejudice suffered by the Fund and its members could have been avoided had judgment been obtained earlier.

“

**The Court held that the *in duplum* rule applies unless a court orders otherwise and clarified that its applicability does not require explicit reference within a judgment.**

#### The Pension Funds Adjudicator's approach

The Adjudicator had taken the position that the *in duplum* rule did not apply to section 13A of the PFA, relying on the ruling in *Municipal Workers Retirement Fund v Umzimkhulu Local Municipality and Others* (11458/2015) [2023] ZAKZPHC 80 ("Umzimkhulu Judgment"), where the Court ordered the payment of interest without considering the rule (see the OPFA Quarterly Digest Issue – January 2024). Prior to the Umzimkhulu judgment, the Adjudicator applied the *in duplum* rule (see the OPFA Quarterly Digest Issue - April 2023). However, as the *Blue Crane* judgment, was handed down by a full Court the Adjudicator will now factor in the rule when determining interest payable in terms of section 13A(7).

#### Conclusion

Given the prevalent non-compliance with section 13A within the industry, pension funds are encouraged to take proactive legal measures to protect their members' interests, as set out in FSCA Conduct Standard 1 of 2022 (RF) - Requirements Related to the Payment of Pension Fund Contributions. As the judgment emphasises, a fund can effectively mitigate potential prejudice to both itself and its members by taking action early.

**Has your pension fund let you down? Speak up!**

Complain to the Office of the Pension Funds Adjudicator, for **FREE!**

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The financial sector ombud system - no lawyers needed, easy to use, and available in your own South African language! Financial ombuds are overseen by the Ombud Council.



# Circumstances under which a fund may consider DNA testing



*Thamsanqa Maphasa,  
Assistant Adjudicator*

*One of the biggest challenges that boards of pension funds face is disputed paternity when dealing with the allocation of death benefits.*

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This challenge may occur in instances where the deceased did not provide support to a child whom he was legally liable to maintain, where the deceased supported a child whose paternity is in question and where the deceased did not support a child whose paternity is in question because there is no biological relationship. When resolving the above-mentioned challenges, case law can help guide trustees in navigating these challenges.

## **Legal Framework**

Section 37C of the Pension Funds Act 24 of 1956 ("the Act") which governs the distribution and payment of death benefits payable on the death of a member gives boards discretionary powers to decide on an equitable allocation of the death benefit. It places a duty on the board to identify the beneficiaries of a deceased member and vests the board with discretion to allocate the death benefit.



Dependants of the deceased may be classified as legal dependants, i.e. members of his household, including the spouse, children, a posthumous child and an adopted child; factual dependants, in terms of section 1 of the Act defined as persons in respect of whom the deceased was not legally liable to maintain, if such a person is in the opinion of the board dependent upon the deceased and future dependants, being any persons in respect of whom the member would have become legally liable for maintenance had the deceased not died.

Boards often face situations where the paternity of a child of a deceased member is questioned. It must be noted that the board can consider a DNA test where there is genuine uncertainty regarding paternity, and the dispute cannot be resolved by applying regular rules of evidence. It should also be considered whether it is in the best interests of the child to undergo a DNA test (see *M and Another v D* (A50202016 [2018] ZAGPJHC 602 (24 October 2024))).

## **Is a DNA test necessary for factual dependants?**

In the matter of *Kekana v Nedcor Defined Contributions Provident Fund* [2010] 3 BPLR 295 (PFA), the Adjudicator held that the Act speaks of dependency, rather than a biological relationship, as a crucial factor in determining whether anyone should be allocated a death benefit.

## **What happens if there is no father and child relationship, and the deceased did not provide maintenance for the child?**

In instances where there was no father and child relationship, the child is not a nominated beneficiary and the deceased did not maintain the child, a DNA test may be necessary to establish the biological relationship (see *Patji v Metal Industries Provident Fund and another* [2020] 1 BPLR 225 (PFA) held in paragraph 5.8). These circumstances mostly occur where the child is born out of wedlock and there is no father and child relationship.

## **How should boards deal with a situation where there is factual dependency and the DNA results disprove paternity?**

There may be instances where the deceased may have been maintaining the child pending results of a DNA test, which suggests that although the child is a factual dependant, the deceased did not intend to continue with the financial support if

the results were negative. In the matter of *S Nkosi vs Old Mutual Superfund Provident Fund and Coca Cola Shanduka Beverages PFA/MP/00110214/2024/MT* the deceased member was the grandparent, and he passed away before the results of the paternity test became available. He financially supported his alleged grandchild, thinking it was his biological grandson. The deceased was meant to only support his alleged grandson until his son was able to prove that the alleged grandchild was not his biological child. The deceased's son could not afford a paternity test, and he only managed to do a paternity test with the money that he received as a death benefit. The paternity tests confirmed that the alleged grandchild was not his biological grandchild. The Adjudicator ordered that the board's decision concerning the allocation of the death benefit to the grandchild be set aside and the fund be ordered to re-investigate same in terms of section 37C of the Act and re-exercise its discretion accordingly.

Where there is a misrepresentation, and the person would not have supported the child had they known about the DNA results, then the trustees are entitled, after receiving the DNA result to rely on the misrepresentation to question the factual dependency. In the matter of *VJS v SH* (19578/2024) [2024] ZAWCHC 333 (22 October 2024) at paragraphs [42] and [43], Lekhuleni J held:

"[42] ....Ostensibly, the respondent hid this information from the applicant to receive maintenance from him. In my view, the respondent's conduct appears to be a paternity fraud. Her conduct in my view, constitutes misrepresentation..."

[43] ....I am mindful of the centrality of the child's best interests as enshrined in section 28(2) of the Constitution. However, the applicant has no legal duty to maintain the child. He should not be saddled with the responsibility of paying child maintenance, as the child is not his...."

In *VJS v SH* the court did not pronounce on whether the DNA test was necessary as the test had already been conducted and results obtained when the matter went to court. The father approached the Court to terminate parental responsibility. Whilst the case did not relate to section 37C, its principles underscore that, where factual dependency was as a result of the misrepresentation of paternity, such child may be excluded if the support was present due to the mistaken belief that there is a biological relationship.

## Conclusion

In conclusion, when funds allocate death benefits, they must rely on proof of dependency rather than a biological relationship. Only in instances where the deceased's paternity is questioned and there is a genuine uncertainty may the fund rely on the DNA test provided to make an equitable distribution of the death benefit.



## My Journey at the Office of the Pension Funds Adjudicator

*Regomoditswe Loate,  
Case Officer*

*My name is Regomoditswe Loate, and at 25 years old, I embarked on my professional journey at the Office of the Pension Funds Adjudicator (OPFA) from 01 March 2023 in the role of a Legal Intern. I was eager to gain work experience.*

This initial period as an Intern marked the beginning of what would become a truly enriching and transformative experience. My first role was assisting with various administrative tasks while supporting the teams in handling pension fund complaints. The exposure I gained in this phase helped me understand the complexities of the pension fund landscape and the significant role the OPFA plays in resolving disputes.

As an Intern, I was particularly fascinated by the organisation's commitment to upholding justice and helping the public. I witnessed firsthand how essential it was for pension fund beneficiaries and stakeholders to have a neutral body where their concerns could be addressed fairly and impartially. It was in this environment that my passion for the field of pension fund regulation developed.

The end of my internship in February 2024 was not the end of my journey at the OPFA. I had developed a deep interest in case management and the investigative processes behind pension fund complaints. This led me to return to the OPFA in August 2024, as a temporary staff member for the two-pot system implementation.

My role as a contractor involved assisting with two-pot enquiries - an area that was pivotal during that time. I worked closely with the team to respond to enquiries related to the two-pot system. This period allowed me to sharpen my skills in customer service.

When my contract came to an end in February 2025, I was fortunate to successfully apply for a permanent position as a Case Officer from March 2025.

This new role represents the culmination of my hard work, dedication, and the guidance I received from my mentors at the OPFA. I am excited to continue my career here, where I can take on more responsibility and further develop my expertise in pension fund case management. Being part of this dynamic organisation has taught me the importance of perseverance, professionalism, and always striving for excellence in everything I do.

Thank you to everyone who has been part of my journey at the OPFA. I am proud to be part of such an impactful organisation, and I can't wait to see where this path will lead me next.



## Collaborating to Strengthen Awareness and Access

*Lesego Senne-Sibilanga, Ombud Council*

## Ombud Council

Ensuring an accessible and trusted financial sector ombud system

In line with its mandate to promote fair and independent dispute resolution, the Ombud Council continues to work closely with financial ombud schemes, including the Office of the Pension Funds Adjudicator (OPFA), to improve visibility and ensure broader access to redress. As part of this effort, the OPFA has been featured in **a series of initiatives** aimed at raising public awareness about the financial ombud system and the services available to customers.

To this end, the Council recently launched **a nationwide multi-platform** campaign to spotlight the work of ombud schemes under its oversight. The campaign included:

- Outdoor media placements at major airports and national highways,
- A targeted digital rollout across social media and online publications,
- A Motsweding FM radio interview in which Mr. Tshepang Monare represented the OPFA and explained how the office supports consumers in resolving pension fund disputes. The interview was conducted in Setswana.

Complementing these efforts, the Council marked World Consumer Rights Month by hosting a webinar about the **Financial Ombud System**. Representing the OPFA, Ms Yolande van Tonder contributed to a panel that unpacked the financial ombud system, providing practical guidance to the public on how to seek redress, particularly in relation to pension fund complaints.

Building on this momentum, the Ombud Council looks forward to the upcoming **Rand Show** on 17-21 April, where the Ombud Council has collaborated with all financial ombud schemes, including the OPFA, through a shared exhibition space. This joint presence will allow visitors to interact directly with representatives, ask questions, and walk away with a better understanding of how to navigate the financial ombud system and exercise their rights.

These ongoing efforts reflect the Ombud Council's commitment to building an informed public, together with the OPFA. By bringing the financial ombud schemes closer to financial customers, the Council continues to strengthen access to fair, independent financial redress through the ombud system.



# Quarterly Stakeholder Engagement Activities

Zimasa Majola, Communications Practitioner



The OPFA conducted mall activations at Lemo Mall and Twin City Mall in Mangaung, Free State as part of its quarterly roadshows.

*In the quarter to March 2025, the Office of the Pension Funds Adjudicator (OPFA) concluded its stakeholder engagement activities across South Africa, promoting and delivering on its mandate to resolve pension fund disputes fairly and expeditiously. From urban townships in Mangaung to radio platforms, career fairs, and community outreaches, the OPFA connected with diverse communities, empowering them with knowledge and making its services more accessible. Below is a summary of our quarterly stakeholder engagement activities.*

In February 2025, the OPFA participated in the Joburg Ombudsman's Citizen Information Clinics at the East Bank Hall in Alexandra as part of a citywide campaign themed "Here to Hear You." Focused on the city's commitment to providing municipal services to all, the OPFA engaged residents through an exhibition and presentation, explaining its mandate, services, and the process of lodging complaints related to pension funds.

Later that month, the OPFA conducted its quarterly outreach in Mangaung, Free State. This included mall activations at Lemo Mall and Twin City Mall and an educational segment on Radio Bloem, a local digital radio station. These efforts extended our reach, ensuring more individuals were informed about our free services. The team also educated shoppers who visited our stand and assisted complainants in completing forms, making our services more accessible.

In March 2025, the OPFA engaged with aspiring law students at the University of Pretoria's Law Career Day. The team showcased the OPFA's services and promoted career opportunities to enthusiastic students and law firms, helping bridge the gap between academic studies and obtaining professional experience.

To commemorate World Consumer Rights Day, the OPFA participated in the Ombud Council's Consumer Rights Awareness webinar on 17 March 2025, alongside the FAIS Ombud, National Financial Ombud Scheme South Africa (NFOSA), the Financial Sector Conduct Authority (FSCA), and Black Sash, a human rights organisation advocating for social justice in South Africa. Together, they addressed fair financial practices, consumer rights and protection, and how the financial ombud system supports complainants.

The OPFA also broadened its reach through a series of radio interviews. Pension Funds Adjudicator Ms. Muvhango Lukhaimane discussed recent determinations on Kaya FM and You FM, while Deputy Adjudicator Naheem Essop discussed unpaid municipal pension funds on Channel Africa. Senior Assistant Adjudicator Mr. Tshepang Monare explained the OPFA's mandate in Setswana on Motswedding FM as part of the Ombud Council's initiatives to promote ombud schemes.

We wrapped up the quarter in Meadowlands, Soweto, partnering with the Banking Association South Africa (BASA) to empower 300 seniors. The OPFA worked alongside key financial institutions to promote financial literacy, helping residents navigate pension fund-related matters confidently. It was truly a day of learning, connection, and community building.

## Conclusion

These initiatives reflect the OPFA's ongoing commitment to equip stakeholders with the knowledge and tools to protect their financial future. As we enter a new financial year, we remain dedicated to serving communities where we are needed most, resolving disputes quickly to ensure we remain accessible and relevant to the public.

For more information, please get in touch with us through our official channels or visit our stand at the upcoming Rand Show from 17-21 April 2025.



# Outreach Activities



Ms Mudau and Ms Ledwaba exhibiting during the Banking Association South Africa (BASA) initiative in Meadowlands, Soweto.



OPFA answering questions and promoting financial literacy among seniors during the BASA outreach at the Rebone Community Club.



Ms Majola engaging with Alexandra residents at the East Bank Hall during the Joburg Ombudsman's Citizen Information Clinics.



Ms Sithole explaining the mandate and process of lodging a complaint with the OPFA in Alexandra, Johannesburg.



The OPFA team showcased its services and connected with students at the University of Pretoria's Law Career Day.



Ms Moshelo speaking to a law student exploring career opportunities with the OPFA at the Law Career Day event.





## HERE'S A STEP-BY-STEP GUIDE TO CHECK THE COMPLAINT STATUS ONLINE:

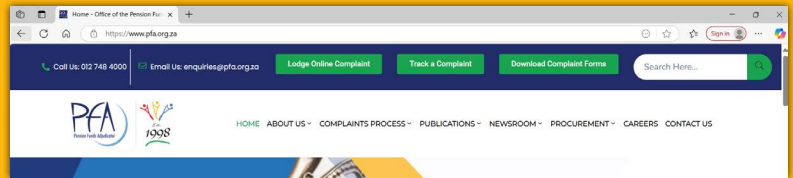
### HOW TO LODGE A COMPLAINT WITH THE OPFA

The OPFA's services are provided free of charge. A complaint must be lodged using an official complaint form.

You may lodge a complaint in one of the following ways:

- **Visit our offices at:**  
4th Floor, Block A, Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens, Pretoria, 0181
- **Submit your complaint online:**  
<https://www.pfa.org.za/submit-a-complaint/>
- **Email your complaint to:**  
[enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)
- **Fax your complaint to:**  
086 693 7472
- **Post your complaint to:**  
Office of the Pension Funds Adjudicator, PO Box 580, Menlyn, 0063
- **For queries contact:**  
012 748 4000 / 012 346 1738

**01 Go to the OPFA website <https://www.pfa.org.za/> and click Track a Complaint.**



**02 Enter the ID/Passport Number or case reference number and Search.**

#### Track Your Case

Stay updated on the status of your case with ease. Use our online tracking system to view real time information about the progress of your case.

#### How to Track Your Case

1. Enter your case reference or identity number.  
2. Click "Search" to view progress on your case.

Search Complaint By

Case Number

Case Number

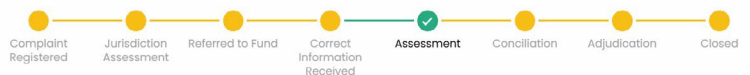
Case Number (eg. OP\12345678\12023)

Search

**03 The current stage of the case will be displayed.**

#### Search Results

The complaint is currently at the **Assessment** stage.



**04 Refer to the complaint stages for more information about the stage of the complaint.**

#### Search Results

The complaint is currently at the **Assessment** stage.

This is a stage where the complaint is evaluated for the following: if the complaint is out of jurisdiction, settlement, conciliation is required, or the complaint can be referred for Adjudication.

