



POLICY ON MANAGING UNACCEPTABLE BEHAVIOUR BY PARTIES TO A COMPLAINT

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| Title: | Policy on Managing Unacceptable Behaviour by Parties to a Complaint |
| Custodian: | Pension Funds Adjudicator |
| Prepared By: | Senior Legal Advisor and Executive Head Corporate Services and Chief Financial Officer |
| Date Created: | June 2024 |
| Version No: | 01 |
| Date Approved: | 20 June 2025 |
| Effective Date: | Date of approval |
| Approved By: | Pension Funds Adjudicator |

Version Control Page

This page should provide a history of previous versions of the policy and changes made:

| Version | Date | Author | Status | Comment / changes |
|---------|-----------|---|-------------|-------------------|
| 1 | June 2024 | Nondumiso Ntshangase & Bulelani Makunga | First draft | N/A |
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Table of Contents

| | |
|--|-----------|
| 1. Introduction | 4 |
| 2. Definitions | 5 |
| 3. Purpose | 7 |
| 4. Legal framework | 7 |
| 5. Scope of the Policy | 9 |
| 6. What constitutes Unacceptable Party Behaviour | 9 |
| 7. What does not constitute Unacceptable Party Behaviour | 10 |
| 8. Guidelines for Addressing Unacceptable Party Behaviour | 10 |
| 9. Grievance process | 12 |
| 10. Record keeping and Reporting | 13 |
| 11. Review and Approval | 13 |

1. Introduction

- 1.1. The mandate of Adjudicator in terms of section 30D of the Pension Funds Act, 1956 (“Act”) is to dispose of complaints lodged in terms of section 30A(3) of the Act, and complaints for which the Adjudicator is designated in terms of section 211 of the Financial Sector Regulation Act. In disposing of complaints in terms of subsection (1) the Adjudicator must—
- (a) apply, where appropriate, principles of equity;
 - (b) have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution;
 - (c) have regard to the provisions of this Act; and
 - (d) act in a procedurally fair, economical and expeditious manner.

The Office of the Pension Funds Adjudicator (“OPFA”) is a public entity established in terms of section 30B of the Act. The OPFA supports the functions of the Adjudicator and must ensure that its services are available to the members of the public.

- 1.2. Section 10 of the Constitution of the Republic of South Africa, 1996 (“Constitution”) provides that everyone has inherent dignity, and the right to have their dignity respected and protected.
- 1.3. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. The OPFA is one such entity that gives effect to section 34 of the Constitution.
- 1.4. The OPFA is committed to treating all its stakeholders, including its own staff and parties to a complaint fairly, with dignity, and respect.
- 1.5. Parties to a complaint have access to OPFA staff through various forms of communication methods, including telephone, email, and face-to-face interactions which occurs during the course of investigating a complaint. Encountering unacceptable behaviour by parties towards OPFA staff occurs from time to time including after a complaint has been disposed of.

- 1.6. As an employer, the OPFA promotes a work environment that respects the dignity of its staff members. Accordingly, the OPFA must adopt a consistent approach towards dealing with unacceptable behaviour by parties to a complaint towards its staff. In doing so, the OPFA must maintain a balance between its staff's right to dignity and a party's right in terms of section 34 of the Constitution.
- 1.7. The OPFA acknowledges its legal duty under employment law to provide a safe working environment for its employees. In line with the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, the OPFA is committed to preventing, eliminating, and managing harassment, including harassment by complainants, representatives and third parties engaging with the OPFA. This includes taking reasonable and proportionate steps to prevent and address such conduct.
- 1.8. The OPFA recognises that unacceptable behaviour by parties to a complaint towards its staff may hinder the OPFA in achieving its legislative mandate. The processes and responses set out herein aim to ensure that the OPFA is able to give effect to its mandate while protecting parties' rights to procedural fairness and OPFA officials' dignity.

2. Definitions

- 2.1. In this Policy words defined in the Act and not in the Policy shall have the meanings assigned to them in the Act and, unless inconsistent with the context, all words and expressions signifying the singular shall include the plural and vice versa, words and expression implying the masculine gender shall include the feminine, and the following words and expressions shall have the following meanings:

| TERM | DEFINITION |
|-------------------------------------|---|
| Act | means the Pension Funds Act, 1956. |
| unacceptable party behaviour | means any conduct by a party to a complaint that: <ol style="list-style-type: none"> 1. Causes physical or emotional harm, whether intentionally or through recklessness; 2. Involves communication or actions that are intentionally malicious, abusive, or excessively disruptive, including deliberate attempts to undermine the complaint process or the dignity of OPFA personnel; |

| TERM | DEFINITION |
|---|--|
| | <p>3. Creates a hostile or unsafe environment for personnel, including through repeated, unreasonably persistent, or aggressive communication that disrupts or delays the complaint investigation process or</p> <p>4. Includes behaviour that significantly hinders OPFA's ability to conduct a fair, thorough, and timely investigation.</p> <p>Such behaviour may consist of a single egregious incident or a recurring pattern. Frustration or disagreement alone does not constitute unacceptable behaviour unless accompanied by the outlined impacts.</p> <p>The line manager will determine whether the conduct meets this definition by considering its objective effects and its subjective intentions. This assessment will be based on a reasonable evaluation of the impact of the conduct on OPFA personnel and the complaint handling process.</p> |
| <p>unacceptable persistent communication</p> | <p>means communication, whether written, verbal, or otherwise, that continues in an excessive or disruptive manner after the party has been clearly informed that:</p> <ol style="list-style-type: none"> 1. Their issue is being addressed, has been addressed, or a determination has been issued; and 2. They have been provided with information about any available avenues for reconsideration or further appeal (e.g., the Financial Services Tribunal or a Court). <p>Such communication may include, but is not limited to:</p> <ul style="list-style-type: none"> • Repeated or excessive contact with OPFA personnel despite prior responses; • Circulating similar messages to multiple personnel without cause or intent to clarify; • Submitting lengthy or detailed correspondence at an unreasonable frequency or |

| TERM | DEFINITION |
|------|---|
| | <ul style="list-style-type: none"> • Demanding responses within time frames that deviate significantly from the OPFA's standard business practices and norms, creating undue pressure on personnel. <p>This behaviour is considered unacceptable when it disrupts the normal handling of complaints, impedes the efficiency of OPFA's operations, or places an unreasonable burden on personnel.</p> |

3. Purpose

- 3.1. This policy provides guidance on how the OPFA will identify and manage unacceptable party behaviour as defined above. It outlines the process for reporting same and specifies how the OPFA will address such behaviour.
- 3.2. This policy and/or its principles can be shared with the parties to a complaint if they behave in an unacceptable manner to assist in managing their expectations and their behaviour while addressing the substance of their complaint.
- 3.3. Notwithstanding any provisions in this policy, the OPFA reserves the right, in its sole discretion, to deviate from the provisions outlined herein where circumstances warrant such deviation to uphold the spirit and purpose of this policy. The OPFA will both apply the Policy and deviate therefrom having due regard to all parties' procedural fairness rights on a case specific basis.

4. Legal framework

- 4.1. Section 10 of the Constitution on human dignity provides as follows:

Everyone has inherent dignity and the right to have their dignity respected and protected.

- 4.2. Section 34 of the Constitution on access to court states as follows:

Everyone has the right to have any dispute that can be resolved by the application of

law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

4.3. Section 30D of the Act outlines the Main object of the Adjudicator as follows:

(1) The main object of the Adjudicator shall be to dispose of complaints lodged in terms of section 30A (3) of this Act, and complaints for which the Adjudicator is designated in terms of section 211 of the Financial Sector Regulation Act.

(2) In disposing of complaints in terms of subsection (1) the Adjudicator must—

(a) apply, where appropriate, principles of equity;

(b) have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution;

(c) have regard to the provisions of this Act; and

(d) act in a procedurally fair, economical and expeditious manner.

4.4. Section 30V of the Act on Offence and penalties provides that;

Any person who:

(a) Insults the Adjudicator;

(b) Anticipates a determination of the Adjudicator in any manner calculated to influence the determination;

(c) Willfully interrupts any proceedings conducted by the Adjudicator or misbehaves himself or herself in any manner in the place where the proceedings are being held;

(d) In connection with complaints does anything which, if done before a court of law, would have constituted contempt of court;

Shall be guilty of an offence and liable of conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

4.5. This policy seeks to operationalise the applicable legal framework and uphold professionalism by OPFA staff, ensure consistency in dealing with unacceptable party behaviour, protect staff, protect parties to a complaint against harm and preserve the

integrity of the investigation and the adjudication processes without limiting any party's procedural fairness rights.

5. Scope of the Policy

- 5.1. The policy applies to all parties to complaints and/or their appointed representatives who lodge their complaint with the OPFA in terms of section 30A of the Act.
- 5.2. It addresses unacceptable party behaviour, which may involve one or more isolated incidents. This policy applies to all methods of contact, including but not limited to telephone, face-to-face interactions, letters, emails, social media and other digital channels.
- 5.3. The policy draws from the OPFA's experiences in dealing with unacceptable party behaviour, practices of other ombuds, and international best practice.

6. What constitutes Unacceptable Party Behaviour

6.1 The following non-exhaustive examples constitute Unacceptable Party Behaviour:

- 6.1.1. Failing to respect the dignity of OPFA personnel, such as verbal abuse and personal attacks, that may create a hostile and unsafe environment for OPFA personnel;
- 6.1.2. Aggressive, threatening or violent behaviour;
- 6.1.3. Abusive, derogatory, vulgar and offensive language;
- 6.1.4. Use of discriminatory language, such as racist, homophobic or sexist remarks;
- 6.1.5. Sexual harassment;
- 6.1.6. Inflammatory statements intended to provoke hostility or disrupt the complaint process;
- 6.1.7. Insults include behaviours such as personal attacks, derogatory remarks and name calling, which undermine the professional environment or disrupt the complaint resolution process;
- 6.1.8. Unsubstantiated defamatory allegations against an OPFA personnel;
- 6.1.9. Demanding responses within an unreasonable time frame when the response time frame has been communicated to the party;

- 6.1.10. Insisting that the complaint be dealt with in a manner that is contrary to the Act, the OPFA rules, policies, and procedures; and
- 6.1.11. Unacceptable Persistent Communication refers to excessive, disruptive or harassing communication, as defined in clause 2 of this policy, that continues after a party has been informed of the resolution of their issue and other available avenues for appeal or reconsideration.

7. What does not constitute Unacceptable Party Behaviour

When considering what constitutes unacceptable party behaviour, staff and/ or line managers must have due regard to the following:

- 7.1. It is not unreasonable for parties to a complaint to raise legitimate queries or criticisms regarding the OPFA's response to their complaints.
- 7.2. Staff and/or line managers should consider health issues (including mental health issues), language barriers or comprehension difficulties which might have a bearing on the party's behaviour.

8. Guidelines for Addressing Unacceptable Party Behaviour

- 8.1. Before the OPFA makes any decisions under this policy, a review of the circumstances surrounding the issue will be conducted including the party's individual circumstances. If a decision is made to take action to manage unacceptable party behaviour, the OPFA will advise the party why such decision was made. The party will be provided with an opportunity to provide reasons why the policy should not be applied to them.
- 8.2. The following process will apply to staff members:
 - 8.2.1. If an OPFA staff member experiences unreasonable party behaviour, they must immediately request the relevant party to refrain from such behaviour.
 - 8.2.2. If the party's behaviour persists, the staff member must report it to their line manager along with supporting evidence.

- 8.2.3. The line manager must then contact the party concerned, either verbally or in writing, to warn the party to refrain from such conduct and to outline the steps the OPFA could take should the conduct persist. Such contact, if verbal, must be recorded in writing.
- 8.3. Should such conduct persist despite the warning, the line manager must report the matter to the Adjudicator. The Adjudicator may, with due regard to procedural fairness issue a written notice to the relevant party outlining the restrictions on future contact with the OPFA. Any restrictions imposed shall be fair, reasonable, and proportionate to the circumstances. These restrictions may include but are not limited to the following:
 - 8.3.1. Requiring the party to refrain from the identified unacceptable behaviour.
 - 8.3.2. Requiring the party to refrain from Unacceptable Persistent Communication .
 - 8.3.3. Requiring the party to communicate only with a certain member of staff.
 - 8.3.4. Imposing limits on the frequency and duration of contacts with staff.
 - 8.3.5. Limiting the party to a single form of contact (e.g., telephone, letter, email etc.) provided that the party's right to procedural fairness is not compromised..
 - 8.3.6. Requiring any and/or all in-person interactions to take place in the presence of a witness.
 - 8.3.7. Where appropriate, completely restricting contact after the OPFA has become *functus officio*
 - 8.3.8. Directing the party to only contact the OPFA through a third party.
- 8.4. The following process will apply to line managers:
 - 8.4.1. If a line manager experiences unacceptable party behaviour, they must immediately request the party to refrain from such behaviour and outline the steps the OPFA could take should the conduct persist.
 - 8.4.2. Should such conduct persist despite the warning, the line manager must report the matter to the Adjudicator. The Adjudicator may issue a written notice to the party outlining the restrictions on future contact with the OPFA. The restrictions outlined in clause 8.3 may be applied by the Adjudicator.
- 8.5. The following process will apply to the Adjudicator and Deputy Adjudicator.

- 8.5.1. Where the unacceptable party behaviour is directed at the Adjudicator or the Deputy Adjudicator, either the Adjudicator or Deputy Adjudicator may issue a letter warning the party to refrain from such conduct and outline the steps the OPFA could take should the conduct persist.
- 8.5.2. Should such conduct persist despite the warning, the Adjudicator or Deputy Adjudicator may issue a written notice to the party outlining the restrictions on future contact with the OPFA. The restrictions outlined in clause 8.3 above may be applied by the Adjudicator or Deputy Adjudicator.
- 8.5.3. The OPFA reserves the right to invoke the provisions of section 30V of the Act by reporting unacceptable party behaviour directed at the Adjudicator or the Deputy Adjudicator to the South African Police Service.
- 8.6. The OPFA reserves its right to report criminal behaviour to the South African Police Service.
- 8.7. The Adjudicator may revoke any restrictions imposed on a party if, in the opinion of the Adjudicator, the party's behaviour has improved or changed.

9. Grievance process

- 9.1. The Ombud Council is a statutory body established in terms of the Financial Sector Regulation Act of 2017, vested with oversight powers over ombud schemes such as the OPFA. The ombud council has the authority to take various regulatory actions against ombud schemes that contravene financial sector laws or the schemes' governing rules.
- 9.2. Any person who feels aggrieved by the application of the policy can lodge a grievance with the Ombud Council. Grievances can be submitted via email to enquiries@ombudcouncil.org.za.

- 9.3. Any person aggrieved with a decision of the OPFA has a right to apply to the Financial Services Tribunal in terms of section 230 of the Financial Sector Regulation Act, 2017 for a reconsideration or appeal to the High Court in terms of section 30P of the Act.

10. Record keeping and Reporting

- 10.1. The OPFA will maintain a register of all parties to whom this policy has been applied. This record will include all the correspondence and evidence utilised in applying the policy. Such register will be for the internal use of the OPFA and will be treated confidentially and processed in line with the OPFA's data protection policies.
- 10.2. The register must be submitted at the Management Committee and the Executive Committee internally and a summary thereof included in governance committee submissions for noting.

11. Review and Approval

- 11.1. This policy will be reviewed every third year or when significant changes occur.
- 11.2. This policy shall be approved by the Adjudicator.