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In this publication we look at:

- Recent Pension Funds Adjudicator cases and the key lessons for trustees & service providers

PENSION FUNDS ADJUDICATOR RECENT CASES: KEY LESSONS FOR TRUSTEES

Recent determinations by the Pension Funds Adjudicator (PFA) provide important guidance on how trustees should carry out their duties under the Pension Funds Act. These cases highlight where funds fell short, and what trustees must do to ensure fair, lawful and well-reasoned decisions.

SECTION 37C: DEATH BENEFIT ALLOCATIONS

There have been several S37C rulings recently by the PFA, with a consistent theme that trustees must conduct a thorough and evidence-based investigation before allocating death benefits.

In *Rakoma v Galaxy Umbrella Retirement Fund*, the fund's decision was set aside because it did not properly assess the financial needs of the dependants. Although the deceased's minor child and elderly mother were correctly identified, the fund relied on assumptions rather than verified information. As a practical example, the trustees had allocated an amount to the child that was more than the deceased's actual maintenance contribution, without confirming the child's broader financial support. The mother's financial position was also not properly assessed.

The Adjudicator made it clear that trustees must base allocations on real, verified information such as:

- Monthly expenses – like utility statements
- Proof of income – latest payslips
- Medical and education costs – school fee statements
- Other sources of financial support – bank statements

In *Prozesky v Ninety One Retirement Annuity Fund*, the Adjudicator reinforced that nomination forms are not binding. Trustees must exercise discretion and consider all dependants, including those who may not be nominated.

In this case, a friend was the sole nominee but the deceased's disabled sister was financially dependent on her. The fund revised its allocation to include the sister, taking into account her long-term care needs and limited earning capacity. The Adjudicator supported this approach.

The ruling also confirmed that:

- Interdependence can establish dependency.
- Future financial needs must be considered, especially where a dependant cannot support themselves.
- A nominee does not have an automatic right to a benefit; only an equitable share based on circumstances.

SECTION 37D: DEDUCTIONS FOR MISCONDUCT

Two cases clarified when funds can deduct from a member's benefit following misconduct.

In *Nkosi v 10X Umbrella Fund*, the member had signed an Acknowledgment of Debt (AOD) after admitting to theft but later tried to deny liability. The Adjudicator upheld the deduction, confirming that a valid AOD allows a fund to deduct without a court order if:

- The debt relates to dishonest conduct
- The amount is clearly stated
- The agreement was signed voluntarily

Similarly, in *Singh v Old Mutual Superfund Provident Fund*, the complainant argued she signed under duress due to threats of legal action. This was rejected. The Adjudicator confirmed that informing an employee of possible civil or criminal action does not constitute duress, as employers are entitled to pursue legal remedies.

These cases highlight that:

- A properly executed AOD is a powerful tool for employers and funds.
- Members are generally held to what they sign, even if they later regret it.
- Claims of duress must be supported by clear evidence.

For trustees, it is important to ensure that:

- The AOD process is fair and transparent
- There is evidence the member understood what they were signing
- Ideally, the signing is witnessed by an independent party

ADMINISTRATIVE FAILURES AND FUND LIABILITY

The case of *Lane v Motor Industry Provident Fund* demonstrates the serious consequences of weak internal controls.

The fund paid a withdrawal benefit to the wrong person (an unrelated third party) based on fraudulent documentation. The Adjudicator found that the fund failed in its duty under section 7D(1) to maintain proper systems and safeguards.

Importantly:

- The complainant did not sign the claim forms
- There were clear inconsistencies in the documentation
- The fund could not explain how the payment was processed

The fund was ordered to repay the full benefit with returns, even though fraud was involved. The Adjudicator emphasised that decisions are made on a balance of probabilities, not on the outcome of criminal proceedings.

This case reinforces that trustees are ultimately accountable for:

- Strong verification processes
- Proper documentation check
- Preventing unauthorised payments

As a safeguard, funds should limit third-party payments and only allow them where strictly justified, with supporting evidence and indemnities.

EMPLOYER CONTRIBUTIONS AND DIRECTOR LIABILITY

In *Transport Sector Retirement Fund v Clinx Medical Waste Management*, the Adjudicator went further by holding company directors personally liable, together with the employer, for failures relating to fund obligations.

This signals a continued willingness by the PFA to enforce accountability beyond the employer entity, particularly where there is non-compliance with contribution or governance duties.

KEY TAKEAWAYS FOR TRUSTEES

Across these cases, a few clear principles emerge:

- Decisions must be based on proper investigation, not assumptions.
- Documentary evidence is critical in supporting fair and defensible outcomes.
- Trustees must consider both current and future financial needs of dependants.
- Nomination forms are guidelines, not instructions.
- Strong governance and internal controls are essential to prevent errors and fraud.
- Legal tools like AODs are effective but must be handled carefully and fairly.
- Accountability can extend beyond the fund to employers and even directors.

These rulings are a reminder that trustees are always expected to act with care, diligence, and independence. Where they fall short, the Adjudicator will not hesitate to intervene.