



Legal Services

FINANCIAL SERVICES



## ON THE SCALES 5 of 2018

### Pension Fund Adjudicator Annual Report 2016/2017

The Annual Report (“the Report”) for the financial year ending 2016/2017 was issued by the Pension Funds Adjudicator towards the end of last year.

The office of the Pension Funds Adjudicator (“OPFA”) reported that it would not be possible for the OPFA to achieve its mandate without the cooperation of all role-players that provide a remarkable service to members, for which it is thankful.

The OPFA also reported that it is anxiously awaiting the implementation of the Treating Customers Fairly framework (“TCF”), as this will improve the level of service that members of retirement funds receive.

The OPFA added that majority of complaints received by the OPFA this year related to the continued failure by the retirement fund industry to adhere to basic compliance in terms of Section 13A and 13B of the Pension Funds Act (‘the Act’). The reluctance of retirement funds to immediately recover contributions from defaulting employers, on behalf of members poses a real risk to members’ benefit.

---

#### Summary

- 7501 new complaints were received during this reporting period, a 22.41% reduction from the previous year. The reduction is as a result of the OPFA’s decision to exclude incomplete complaints lodged by tracing agents.
  - Gauteng continues to lead the number of complaints received by the OPFA.
  - In addition to registering complaints via email, letters, fax, website submission and walk-in complainants, the OPFA will now be approaching complainants personally and on an increased level, allowing them to register their complaints conveniently.
-

## Statistics

### New complaints

Below are various statistics reflecting the activities of the OPFA for the current and previous year.

There was a 22.41% decrease in new complaints compared to the previous year. The OPFA reported that the decrease is largely due to its decision to exclude incomplete complaints lodged by tracing agents.

### Walk in enquiries

A total of 1885 walk-in enquiries were received in this reporting period. The OPFA did not provide a breakdown of the walk-in enquiries received, nor did they report on whether or not this was an increase from the previous year, as done previously.

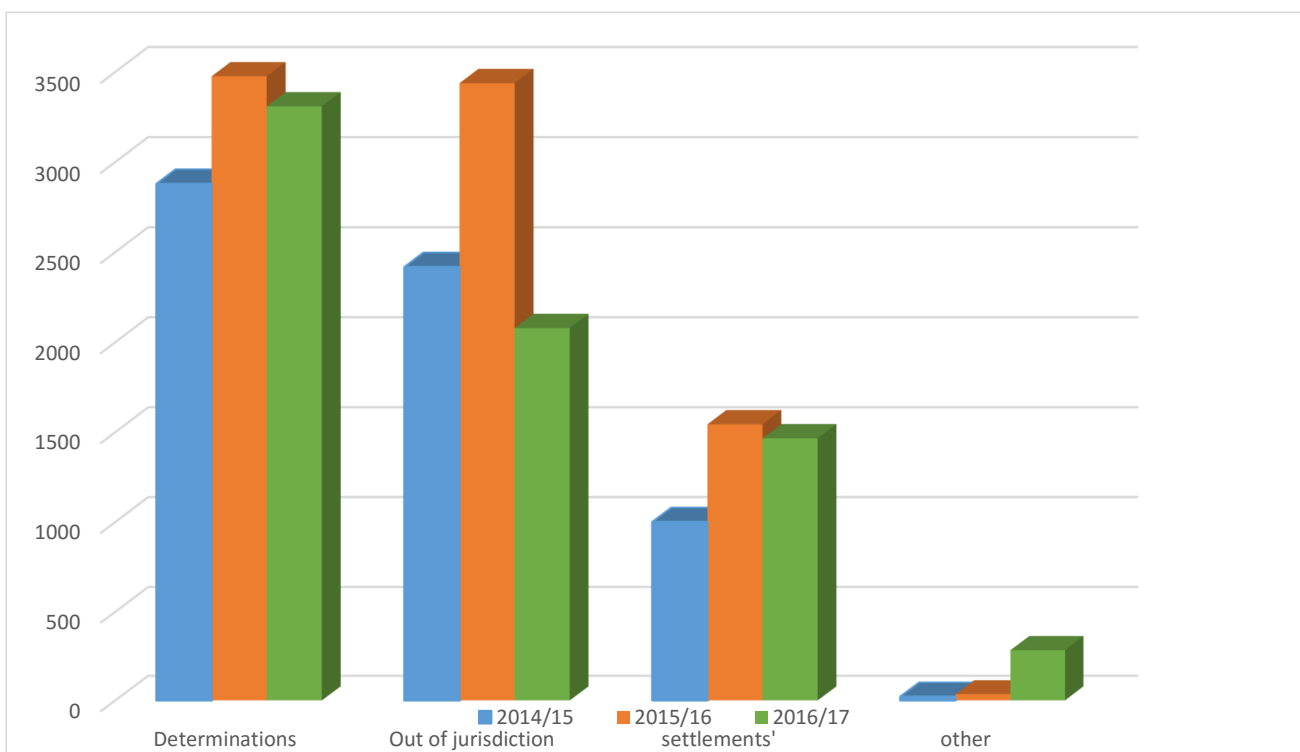
### Breakdown of the total complaints finalised

In this reporting period 7138 complaints were finalised, compared to 8461 in the previous year. This represents a reduction in 15.6%.

#### The 7138 complaints were finalised as follows:

- 3 309 determinations were issued by the OPFA, 75% of which were handed down within six months of receipt of the complaint. This is an increase of 94% over a period of nine months;
- 1 466 settlements were reached, 90% of which were finalised within six months of receipt of the complaint. This is an increase of 97% over nine months;
- 2 079 complaints were out of the OPFA's jurisdiction.

The OPFA intends to improve the turnaround time for its complaints handling, however it added that the biggest stumbling block affecting turnaround times remains the fact that 80% of the responses from retirement funds are only received between two and three months after the complaint is issued to them.

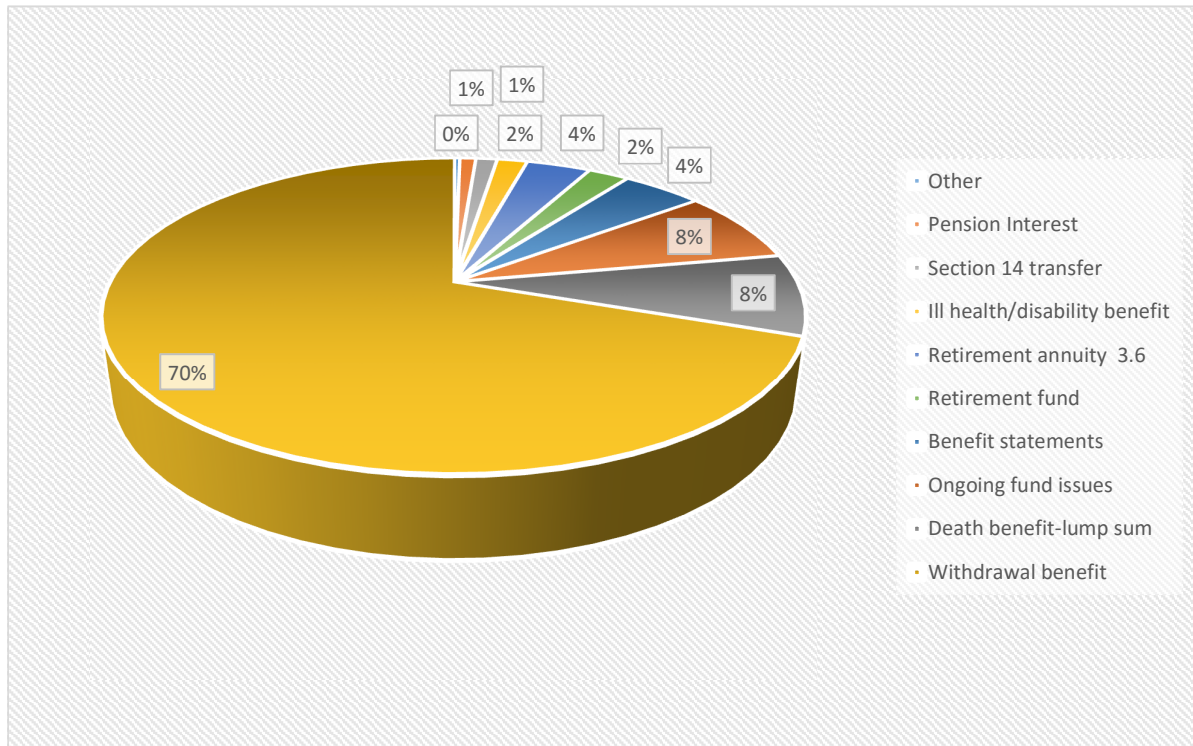


## Types of complaints received during 2016/2017

70% of all matters finalised related to withdrawal benefits.

The OPFA indicated that employers' failure to comply with section 13A of the Act remained a trend that continued unabated, which is an utmost concern. The OPFA added that this was as a result of lack of enforcement by the Registrar of Pension Funds ('the Registrar'). The OPFA stressed the importance of compliance with Section 13A of the Act, the purpose of setting up a retirement fund for members, and suggested a reporting mechanism to keep track of non-compliance of Section 13A by the Registrar.

## Nature of complaints that were closed



There were 695 complaints referred to other entities, such as SARS, FSB, FAIS Ombudsman, CCMA, Banking Ombudsman and Department of Labour.

The OPFA reiterated that the office does not have jurisdiction over GEPF complaints, Section 15B surplus matters, values of section 14 transfers and underwritten disability benefits.

A total of 24 appeals were lodged against determinations.

## Miscellaneous

Stakeholder interaction continued as it is important that key stakeholders engage with the OPFA regularly to facilitate the complaints management process.

The Adjudicator met with various retirement funds, principal officers, and administrator representatives throughout the year. She also attended many networking seminars with different institutions and conducted radio and television interviews.

## **Implementation of Treating Customers Fairly**

The OPFA forms part of the Market Conduct Regulatory Framework Steering Committee, which functions as a stakeholder consultation forum between the FSB, National Treasury and the TCF steering committee in relation to the development and implementation of a market conduct regulatory framework.

The Tribunal remains concerned about the weaknesses in regulations in the retirement sector when viewed in light of the TCF outcomes.

The implementation of TCF remains in the development stages.

## **Summary of important determinations**

One of the advantages of a specialist tribunal such as the OPFA is that parties can rest assured that there is a repository of specialist pensions law knowledge that understands the nuances of the retirement funds industry. It is this knowledge that enables the tribunal to resolve disputes in an expeditious and economical manner, whilst at the same time adhering to the rule of law.

The report summarises cases which the Adjudicator settled during the course of the year dealing with important areas of law around pension funds administration, which included:

- Non-payment of a withdrawal benefits;
- Funds must verify a beneficiary's identity;
- OPFA reports a principal officer to the Registrar;
- Cession of pension benefits not allowed;
- Withholding of a benefit;
- Quantum of death benefits;
- Fund ordered to pay punitive damages;
- Death benefits; and
- Section 14 transfers, amongst others.

If you would like a copy of any of the determinations highlighted in the report, please contact your consultant who will be able to assist with this. A full copy of the report can be obtained from the PFA's website:

<https://www.pfa.org.za/publications/pages/annual-Reports.aspx>

## **Accounts and Financials**

The OPFA's total expenditure for 2017 amounted to R5 662 928. This expenditure was made up of employee's costs, remuneration of service providers, depreciation, amortisation impairments, relocation costs and operating costs of the OPFA.

---

*If you need more information, please contact your consultant.*

---