

Africa News Service / HighBeam Business – South African Business Interests Set Up Security Fund – February 16, 2001

Employer organisations and trade unions in the private security sector, this week jointly announced the establishment of a national provident fund for the private security industry.

'Fedsure Group Benefits' was appointed as the administrator of the National Private Security Sector Provident Fund.

The biggest advantage of the National Fund being administered by Fedsure Industry Funds is that employees would not lose benefits when they change employment within the security sector.

This means that the benefit at retirement would ultimately be based on an employee's overall service in the sector, irrespective of whether service was with a multiple number of employers or not. ...

<http://business.highbeam.com/3548/article-1G1-70491175/south-african-business-interests-set-up-security-fund>

SAPA – PSSPF adopts zero tolerance approach – July 25 2007 – 05:16pm

Zero tolerance would be taken against security companies who don't comply with the pension fund rules, the Private Security Sector Provident Fund (PSSPF), said on Wednesday.

Trustee spokesperson Sizo Majola said this was in an effort to root out fraudulent activities on more than 2 000 security companies that do not contribute or fully comply with the PSSPF, as defined in the Sectoral Determination.

He said numerous registered security companies deducted money from employee's wages, claiming that their contributions, together with the employer's contributions were being paid to the provident fund.

"The non-payment of these contributions has resulted in the repudiation of many death, disability and pension payout claims by the fund.

"The impact of this fraudulent practice is that beneficiaries never receive the financial compensation they were expecting," Majola said.

To date over 350 claims were refused due to non-payment of contributions, equating to over R12 million held back in benefit payments.

In addition, more than R60-million was raised in the fund's financial statements for outstanding contributions.

PSSPF chairperson, Kevin Derrick said 1 056 complaints had been lodged with the pension funds adjudicator whose rulings held the same weight as a High Court.

He said police recently prosecuted an employer in Port Elizabeth who was sentenced to four years imprisonment.

"We are currently engaging in High court action against 10 employers and are pleased to announce that a particular employer was compelled to pay all arrears contributions including interest," said Derrick.

He said there were also numerous employers who were not registered with the fund resulting in the security officers and armed response personnel and their beneficiaries not enjoying the statutory benefits.

"This also enables security employers to undercut pricing as their costs are exclusive of the 6,5 percent of salary, they would have had to carry had they been compliant."

<http://www.iol.co.za/news/south-africa/psspf-adopts-zero-tolerance-approach-1.363478#.U2jSeGeKcT9>

IOL – Bonile Ngqiyaza – Security firms dodge pension payments – July 27 2007 – 11:13am

Security industry pension fund administrators have disclosed that almost 50 percent of companies - more than 2 000 - operating in the industry don't pay employee contributions to the fund as required by the law.

The Private Security Sector Provident Fund also disclosed that in addition to this, there were about 50 000 industry operators who occupied an even more shadowy space, as they were not registered as members and did not comply at all with requirements.

The result is that security guards and armed-response personnel and their beneficiaries don't enjoy benefits.

This also enabled security employers to undercut pricing as their costs did not include the 6,5 percent of salary they would have had to carry had they been compliant, the fund's chairperson, Kevin Derrick, said on Thursday.

NBC Holdings divisional director Gansen Govender said some employers defraud their employees by deducting contributions from their wages and claiming they were making payments to the administrators, but were not doing so.

"If there has been no contribution, there is no benefit paid," he said. Govender added that the industry had paid out about R70-million in benefits so far this year.

Derrick told journalists at a briefing in Sandton on Wednesday that more than 350 death, disability and pension payout claims - a figure that translates to R12-million - had been repudiated so far as a result of the non-payment of these contributions.

On Wednesday, the trustees of the Private Security Sector Provident Fund made public a list of companies they said complied with the rules and provisions of the Pension Funds Act.

This effectively exposes the more than 2 000 security companies that the fund said did not contribute or fully comply with the rules and regulations.

Derrick said the fund had approached the SA Police Service, and complaints had been lodged.

Another 1 056 complaints had been made to the Pension Funds Adjudicator - an institution whose rulings hold the same weight as those of the High Court.

South African Transport and Allied Workers' Union representative Jackson Simon told the briefing that unions should be playing a critical role in trying to enlighten employees about their pension and medical aid contributions and intervening on their behalf.

<http://www.iol.co.za/news/south-africa/security-firms-dodge-pension-payments-1.363698?ot=inmsa.ArticlePrintPageLayout.ot>

Naspers – Dumisane Lubisi – Firm fails to meet crucial industry requirement but gets R90m deal to guard airports – 2007/11/03

SOUTH African Airways (SAA) has awarded a lucrative security contract to a company that has failed to comply with government regulations on provident funds for its guards. Reshebile Aviation and Protection Services won the three-year R90 million tender to provide security services at all of the national carrier's premises across the country two weeks ago.

But the company has failed to comply with the government's plan to regulate the private security industry provident fund for guards. In 2001, the department of labour published a sectoral determination for the industry which required that all security firms register with the Private Security Sector Provident Fund (PSSPF).

The determination also said that exemption would be given to those companies which had existing funds before 2001. It further required that new companies register with the fund. City Press has established that Reshebile has not complied with the department of labour's regulations since it started operating in 2003, two years after the determination was published.

City Press has also learnt that SAA management were warned about the non-compliance of Reshebile weeks before a decision to award the tender was made. The decision to award the tender to Reshebile was announced on October 19. The firm will be responsible for firearm operations, securing cargo operations and aircraft for international flights, passenger screening, general office security and valuable cargo movement at all airports.

An SAA spokesperson said the PSSPF was one of many existing funds within the private security industry and the airline had found that Reshebile was registered with the Security Employees National Provident Fund, which "exceeds the requirements of the PSSPF". "On award of the tender, Reshebile fully complied with the law stating their employees should belong to a provident fund, therefore SAA cannot be held liable for any contravention," a statement to City Press said.

However, Titus Mtsweni, the executive manager for employment standards at the department of labour insisted that the law requires all companies to register with PSSPF. When asked if companies can belong to other funds, Mtsweni said: "Yes, only if the employer prior to March 30 2001, on which the PSSPF was established, had an existing pension or provident fund covering employees." Reshebile was established two years after the regulation came into effect.

On Friday, Reshebile's founder, Shadrack Dladla, said questions about his company not being compliant were raised by "bitter rivals within the industry". However, Dladla, a former policeman conceded that Reshebile was not registered with PSSPF as required by law. He was defensive of his decision to register with another provident fund instead of the one set by government.

"I am only doing what is best for my employees. I do not want to prejudice my employees by belonging to a fund that does not offer them better benefits," he said. "I don't think it was government's intention (with the sectoral determination) to take away the right of employers to belong to other provident funds which offer better benefits. It would be wrong for government to say you cannot belong to other provident funds except PSSPF."

City Press has also established that Reshebile applied for exemption to the PSSPF earlier this year

but their application was declined. Dladla said he applied because “the law (sectoral determination) says so”. When asked why he selectively uses the law, which also requires that he register with the PSSPF, Dladla said: “I am not breaking any law and my people are covered. If I have done anything wrong, they should take me to court.”

Reshebile was formed as a joint venture company between KwaZulu-Natal Security Services and Zonkizizwe Security Services. Records at the Companies and Intellectual Property Registration Office (Cipro) show that ANC stalwarts Gertrude Shope and Paul Langa are directors of Zonkizizwe. In a complaint lodged with the Pension Funds Adjudicator, the PSSPF charged that Reshebile’s application was declined based on the exemption criteria.

“Therefore, the employer (Reshebile) should have terminated their existing fund and transferred to PSSPF. The employer has not complied,” the complaint reads. Mzwandile Zibi, the principal officer of PSSPF, said there were over 2 000 companies that did not comply with the fund’s rule. “We have taken companies to court to force them to pay for provident funds. No company or person has successfully challenged us,” Zibi said.

He said the fund had outstanding payments of R60 million in March this year. A total of 350 claims, which equates to R12 million, were also rejected due to non-payment of contributions by employers. Stefan Badenhorst of the Private Security Regulatory Authority said they have opened over 1 200 cases against companies for breaking the industry’s code of conduct. Mtsweni said the department of labour was in the process of engaging tender boards to “ensure that during the tendering process, prospective service providers prove that they have taken into account sectoral determination when compiling their tender documents”.

Writing in the security industry magazine, Security Focus, in September this year, Kevin Derrick, the chairperson of PSSPF’s compliance sub-committee, said non-payment of contributions by employers resulted in the rejection of death, disability and pension payout claims.

“As a result of not paying their fund contributions, non-compliant parties are able to operate at a discounted rate of 13.5%. What is frightening is that these employers are not just small businesses but big multinationals and even government departments.

“These entities and their security providers are exploiting the guards for the sake of paying cheaper rates and then have the audacity to wonder why we have strikes,” Derrick wrote. The industry suffered one of the deadliest and most expensive strikes between March and June last year. A total of 57 non-striking security guards were killed, allegedly by their striking colleagues during the period.

where there’s smoke . . . The Private Security Sector Provident Fund (PSSPF) has lodged a complaint with the Pension Fund Adjudicator, saying SAA’s new security firm broke the law by failing to register with the fund (PSSPF)

<http://m24arg02.naspers.com/argief/berigte/citypress/2007/11/03/CP/1/dISAA.html>

FA News – The Office Of The Pension Funds Adjudicator – PFA: Ruling concerning the participation employers being held liable for failing to timeously lodge claims – 25 January 2008

Landmark ruling concerning the participating employers being held liable for the employee’s repudiated disability benefit due to failure by the employer to timeously lodge a written claim with the trustees of the provident fund

The Pension Funds Adjudicator has issued a landmark ruling in the matter of **G v Private security sector provident fund (PSSPF) and Sechaba Protection Services Western Cape (Pty) Ltd** regarding the employer being held directly liable for the member's (complainant) disability claim in the event whereby the employer negligently failed to timeously lodge a formal written claim on behalf of the member (complainant) resulting in the member's (complainants) claim being repudiated by the provident fund.

Facts

The facts of the matter are briefly the following:

The complainant was employed as a security officer with Sechaba Protection Services Western Cape (Pty) Ltd since 28 February 2000. The complainant by virtue of his employment with Sechaba Protection Services became a member of PSSPF in November 2002 when Sechaba Protection Services commenced its participation therein. On 4 June 2003, he was pushed out of a moving train and sustained some injuries as a consequence of which his left leg was amputated above the knee.

One year and four months after the accident (5th October 2004), Sechaba Protection services submitted a Termination Claim form in respect of the complainant, which was signed on 7 July 2004. Before the claim for a withdrawal benefit could be processed, on 18 November 2004 the PSSPF received notification from Sechaba Protection Services that the complainant had, as a result of being disabled during July 2003, been unable to return to work. PSSPF referred the claim to its insurer, African Life Assurance, which repudiated it on the grounds that the Sechaba Protection Services should have lodged the claim not later than 6 months from the date of disablement as is required by the provisions of the group life policy.

During March 2006, the board of the PSSPF referred the claim to a team of Occupational Therapists employed by NBC Health Risk Management Services for an assessment of its medical validity. The occupational therapists assessed the claim and compiled a report, dated 25 March 2006, wherein they expressed the opinion that the complainant was totally and permanently disabled, as envisaged in the rules of PSSPF, from performing his own occupation or any other occupation for which he could reasonably be considered capable of engaging in by virtue of his training and general experience.

Therefore the PSSPF board concluded that the complainant was permanently and totally disabled as envisaged in the rules. It thereupon decided to make an ex gratia offer, without acknowledgement of liability, to pay to the complainant an amount of **R11 681.28** in full and final settlement of any claims that he may have had against the PSSPF arising out of the of the lump sum portion of the disability benefit. The complainant accepted the offer. However, this is not the amount that the complainant was entitled to.

According to the administrator of PSSPF, had the complainant's claim been lodged timeously and accepted by the insurer, he would have been entitled to be paid from PSSPF a lump sum disability benefit equal to two times the complainant's annual salary. The complainant's annual salary at the date of disability was R14 601.60, while his fund credit was R766.05. Therefore, the complainant's capital disability benefit would have been the sum of **R29 969.25** had it not been for the delay by Sechaba Security Services in lodging the claim.

Complaint

The complainant then lodged a complaint with the Adjudicator for the difference between, what he would have been entitled to had the claim been lodged timorously and the ex gratia payment that he had received from PSSPF.

Determination and findings

The Adjudicator applied the ordinary principles of delict in determining liability by the employer (Sechaba Protection Services) for the amount over and above the ex gratia payment. The Adjudicator reached the conclusion that the employer is liable to compensate the complainant for wrongfully and culpably, through an unlawful act or omission, causing the complainant to sustain quantifiable loss. This conclusion by the Adjudicator was based on the following:

- On assessment of rules of the Fund, the Adjudicator noted that there was a clear duty placed on the employer to notify the Fund in writing about a member's disablement and to submit the all documentation required by the board in support of the claim, not later than 6 months after the member's last working day.
- The employer had on the facts negligently failed to submit the claim form timeously and in line with the Fund Rules.
- The claim form was only submitted on 18 November 2004, some seventeen months after the complainant's last day at work.
- Therefore premised on the above facts the Adjudicator concluded that the employer by failing to submit the complainant's disability claim documents on time, the employer breached a duty owed by it to the complainant arising out of the provisions of the funds rules and had acted wrongfully and unlawfully.
- The employer was then held liable for the complainant's loss calculated as being the benefit amount of R29 969.25, less the ex gratia payment of R11 681.28, which left R18 287.97 plus interest at the rate of 15.5% from date of determination to date of payment.

<http://www.fanews.co.za/article/compliance-regulatory/2/pfa-pension-fund-adjudicator/1026/pfa-ruling-concerning-the-participation-employers-being-held-liable-for-failing-to-timeously-lodge-claims/3704>

Taxtalkblog – Bruce Cameron – Clampdown on employers who steal from funds – June 4, 2008

Personal Finance

The government, the financial services regulator and the pension funds adjudicator have run out of patience with employers who deduct retirement fund contributions from their employees` pay packages and fail to pay the money over to the funds and to life assurance companies that provide group life cover against death and disability.

Among other things, Jurgen Boyd, the deputy executive in charge of retirement funds at the Financial Services Board (FSB), says that up to 20 employers are to be criminally charged within the next six weeks for failing to pay fund contributions deducted from the pay of employees into their funds.

Boyd says: "We have had enough of employers treating retirement savings of their employees as soft credit. This is not the money of employers. We are working closely with the South African Police Service and the National Prosecuting Authority and we will be taking criminal action in future."

Many defaulting employers have also been involved in tax fraud. There is evidence that some also deduct income tax from employees but fail to pay it over to the South African Revenue Service (SARS) and/or falsely claim employer contributions to employee retirement plans as a tax deduction although the contributions were never made.

For employees, the consequence of the non-payment of contributions is that they lose their retirement savings, do not receive any investment growth and, after two months of non-payment, lose their group life assurance. The lost group life assurance is often the only life assurance cover fund members, particularly lower-income employees, have as protection for their families.

Most fund members, or their dependants in the case of death of a member, find out they have been swindled only when they want to claim their due benefits.

In terms of the Pension Funds Act, all contributions (from the employee and the employer) must be paid to a fund within seven days of the contributions falling due.

This week, the Pretoria High Court placed the provident fund of a JSE-listed security company, Command Holdings, under curatorship after it had failed to pay over contributions for two years (see Command Fund under Curatorship box). The application for curatorship was brought by the FSB after the trustees of the fund failed to ensure the payments were made.

Top pension funds lawyer Shantha Padayachee has been appointed as curator. Her main task will be to recover the R2.2 million that Command Holdings owes the Command Provident Fund.

This is the latest move by authorities to stop the widespread, ongoing disregard of the Pension Funds Act by employers and trustees.

Other action taken against recalcitrant employers includes:

The sentencing last month of a Port Elizabeth security company employer, Joseph Gilbert Williams, to an effective four years in prison on 623 counts of theft arising out of the non-payment of pension fund contributions to the Private Security Sector Provident Fund.

A recent order by the then Pension Funds Adjudicator, Vuyani Ngalwana, that another security company, Securitywise, must pay over a member's contributions (plus penalty interest), which were not paid to the Private Security Sector Provident Fund.

The adjudicator's office has 304 outstanding complaints relating to non-payment of contributions to this umbrella fund.

This week, SARS commissioner Pravin Gordhan warned that checks will also be made by SARS to ensure that there is no tax fraud by recalcitrant employers.

He says SARS is increasingly able to detect cases of fraud with its ever-improving computer systems, which can make comparisons and identify areas of risk.

And Finance Minister Trevor Manuel told Personal Finance that part of the current reform of the retirement system in South Africa is aimed at dealing with the problem.

He says that when the national social security system (NSSF), which includes compulsory membership of a state-controlled retirement fund

<http://www.taxtalkblog.com/?p=2821>

City Press – Fund guards members – 26 September 2009 – 12:47

A PROVIDENT fund representing 200 000 security guards is fighting back against employers who are not passing on to the fund monies deducted from their members' salaries.

The Private Security Sector Provident Fund (PSSPF), which has R1.1 billion in its coffers, has already pushed for the prosecution of a Port Elizabeth employer who was recently sentenced to four years' imprisonment for failing to hand over to the fund the monthly premiums he deducted from his workers.

"We are currently finalising a High Court action against a number of employers. We are pleased that a court action was taken against a particular employer who was compelled through a court order to pay all arrear contributions, including interest," said Peter Zibi, principal officer for the PSSPF.

The office of the Pension Funds Adjudicator (PFA) is being flooded with complaints from members who have had their claims repudiated by the fund and its administrator, Negotiated Benefit Consultants (NBC).

Just this month alone, the outgoing PFA, Mamodupi Mohlala, has made more than 400 rulings against the fund and the NBC. The two have been ordered to make benefit payouts to the claimants plus 25% interest.

But Zibi told City Press Business that the root cause of PSSPF's problems was directly related to security guard employers defrauding their workers.

"It is a fact that numerous registered security companies defraud their employees by deducting monies from their wages and then claiming that these contributions, together with the employers' contributions, are being paid to the fund," Zibi said.

The non-payment of these contributions has resulted in the repudiation of many death, disability and pension payout claims by the fund.

"The impact of this fraudulent practice is that beneficiaries such as spouses and children never receive the financial compensation they were expecting," Zibi said.

Tony Mercer, an NBC executive director, said ever since the company assumed the administration of the fund more than seven years ago it had been plagued with problems ranging from non-payment of contributions to employers failing to submit contribution schedules electronically.

"The primary jurisdictional route for a member using the PFA would be to allege non-payment of a withdrawal claim. Most of these in fact cannot be paid because the fund has not received contributions or correct member data from his/her employer.

"This is a compliance issue that is out of the hands of the NBC. We can only work with the data and contributions we are given," Mercer said.

He said over the years the administrator and the PSSPF had taken numerous steps to address the problem, including instituting legal action against errant employers, often at huge cost to the fund.

At present the fund has 200 000 members, but only 100 000 are paying contributions, according to receipts from NBC.

This means that the fund is half the size it is supposed to be.

About 1?500 employers are currently members of the fund, but there are thousands of employers who by law should join it. In 2007 more than 4 000 security companies were fingered by the PSSPF for defrauding security guards by not paying their premiums to the fund.

<http://www.citypress.co.za/business/fund-guards-members-20090926/>

Business Report – Sapa – Worst performing pension fund named – September 28 2009 – 04:13pm

The worst performing pension fund was named by the Pension Fund Adjudicator in Johannesburg on Monday.

Mamodupi Mohlala identified the Private Security Sector Provident fund, administered by NBC, as the worst overall performing pension fund.

"There is a clear indication that the funds are failing to meet the standard required of them," Mohlala said, noting that only two funds performed well in the assessment.

The best overall performing fund was the Lifestyle Retirement Annuity Fund, and the second best was the Professional Provident Society Retirement Annuity Fund.

Mohlala said these were the only two funds which obtained the 70 percent rating, deeming them acceptable by the office of the adjudicator.

The adjudicator deals with complaints regarding private sector pension funds.

"All the others failed to meet the pass mark of 70 percent," she said.

The need for the scorecard arose as the adjudicator's office received a staggering number of complaints regarding pension fund pay-outs.

At least 390 pension funds were assessed for the period from September 2008 to September 2009.

Of these 390 funds, the office had received one complaint each for about 207 of them.

It had received 345 complaints on the Private Security Sector Provident fund, and 157 complaints about the Central Retirement Annuity Fund.

Mohlala said the need for a scorecard was highlighted with the introduction of President Jacob Zuma's complaints hot line earlier this month.

"The first call that was taken by the president himself was a complaint about access to pension contributions... This points to the need for the scorecard," she said.

The scorecard also showed it was necessary to revise the levies paid by pension funds toward the functioning of the adjudicator's office.

Pension funds had to pay R2.91 to the adjudicator for every member they had. This contributed toward the running of the office tasked with settling complaints.

Mohlala said some pension funds which made large contributions to the adjudicator's office received very few complaints while those contributing a lot less were constantly being complained about.

"We will make a submission to the Financial Services Board to request that contributions in relation to levies be revised.

"If we do not, we will be perpetuating a situation whereby funds who are not performing will be subsidised by those who are doing what is expected of them," she said.

The scorecard ratings that pensions funds received would be referred to the Financial Services Board (FSB).

"Going forward, we will refer the ratings to the Financial Services Board for them to assess the corporate governance... and possibly the licensing of those funds.

"It is the prerogative of the FSB on the licensing of the worse performing funds," Mohlala said.

The adjudicator's office held workshops in September last year to explain how the ratings and requirements for the funds would be assessed for the scorecard.

She said it was clear that some funds went back to align their systems with these requirements and she urged others to do the same.

"It is very unfortunate that not all funds did that," Mohlala said.

She extended an open invitation to pension funds to sit down with her office to ensure that they improve their performance and the services provided to their clients.

The scorecard was independently audited.

A total of 8 275 complaints had been dealt with by the adjudicator's office in the 2008/09 financial year, however, backlogs remained a problem. The economic downturn has also impacted on the number of complaints received.

<http://www.iol.co.za/business/news/worst-performing-pension-fund-named-1.820715#.U3Cwc2eKct8>

Personal Finance – Neesa Moodley-Isaacs – Fund Administrators Cry Foul Over Complaints Scorecard – 3 October 2009

ONLY ONE PENSION FUND OUT OF 290 MAKES THE GRADE, ACCORDING TO ADJUDICATOR'S RATING SYSTEM

Two administrator's funds feature prominently among the worst performers in the Pension Funds Adjudicator's ranking of how funds deal with member complaints sent to her office. But both administrators are unhappy with how the scorecard assesses their performance.

The scorecard of how pension funds deal with members' complaints has been met with wide criticism from the retirement industry. The scorecard was released earlier this week by Mamodupi Mohlala, the Pension Funds Adjudicator (PFA). The overall assessment pass mark of the scorecard was seven, and only one fund, the Lifestyle Retirement Annuity Fund, which is administered by

Liberty Life, passed with a score of 7.19. Mohlala introduced the scorecard to rate funds in terms of the type and number of complaints related to each fund, as well as how a fund handles complaints.

Two administrators, Negotiated Benefit Consultants (NBC Holdings) and Alexander Forbes, each administer four fund that feature among the "top 20 worst performers." Max Maisela, the chairman of NBC Holdings, says that although the scorecard names NBC Holdings as the administrator of another worst-performing fund, the Impala Pension Fund, NBC Holdings is not the fund's administrator. When asked to comment on the fact that NBC Holdings administers four of the worst-performing funds, Maisela said he is not able to comment at this stage, as he does not know how the scorecard works and will have to find out more details before he can comment. "We are waiting for the release of a detailed scorecard before we comment," he says. The full details of the scorecard and how funds would be rated or scored were published by the Office of the PFA in December last year.

DEFAULT DETERMINATIONS

Mohlala recently issued 285 default determinations against the Private Security Sector Provident Fund (PSSPF), which is administered by NBC Holdings, after the fund repeatedly failed to respond to queries from her office. (See PFA cracks the whip on errant fund, Personal Finance, September 5, 2009.) NBC Holdings has since published a report on its website, stating that NBC is seeking legal advice from its attorneys with regard to the articles that appeared in City Press and in Personal Finance on September 5, 2009.

The rest of the statement addresses the article in City Press and makes no further reference to the Personal Finance article. The statement goes on to say that in January this year, the PSSPF instructed NBC Holdings to allow the fund's principal officer to assume full managerial responsibility for all complaints against the fund sent to the PFA. However, Peter Zibi, the principal officer of the PSSPF says the trustees asked NBC Holdings to make sure that all correspondence with the PFA was routed through him in order to ensure that complaints were dealt with.

Too often, we were told that NBC did not receive the correspondence from the PFA office or did not see the determination, he says. Zibi says he does not understand how the scorecard can compare the PSSP which has about 2 000 employer members, with funds that have only a few employer members.

Also, confusion about jurisdiction meant that our fund's complaints were not dealt with between 2002 and 2007, leading to a backlog of cases. After a court ruling that our fund fell under the PEA jurisdiction, we sent upwards of 4 000 complaints to the PFA office in 2007 to be addressed, he says. Zibi says at least 1 400 of those complaints related either to employers that were collecting contributions and not paying them over to the fund or to employers that were collecting contributions and were not registered with the fund.

All pension funds are required to pay the PFA office a levy of P2.91 for each pension fund member a year. The scorecard shows that the cost to all fund members of addressing complaints related to the PSSPF was about R3 900 a complaint, against the PSSPF's levy contribution of P222 479 to the PFÒA for the past year. The PSSPF accounted for 26 percent, or 345, of the complaints received by the PFA from September last year to September this year. The PSSPF was one of eight funds that cost the PFA office more than the amount they contributed to the office in levies (see graph).

Mohlala says a few serial offenders compromise the levy system as other funds subsidise the costs of their complaints. During last year, Mohlala appointed various teams to deal with the complaints backlog. She appointed an entire team to deal with the PSSPF alone. When Personal Finance asked

Alexander Forbes to comment on the fact that it administers four of the top 20 worst performers, Leanne van Wyk, the group legal counsel for Alexander Forbes, says the scorecard is not an assessment of administrators but of funds.

We don't deal with complaints for the Cape Municipal Fund or the Denel Retirement Fund, as both these funds have outsourced that aspect of their business, she says. Van Wyk says Alexander Forbes also "literally just took over one of the other funds from another administrator." Despite repeated attempts by Personal Finance to speak to Mohlala this week, she failed to respond to our queries. Mohlala handed in her resignation at the beginning of September and has been appointed as the director-general in the Department of Communications.

Scorecard 'Doesn't Reflect' State Of Industry

There are 6500 active pension funds in South Africa and the impression created by some media reports earlier this week that the pension funds industry is in dire straits is totally misplaced, Jurgen Boyd, the deputy registrar of pension funds at the Financial Services Board (FSB), says. The scorecard focuses only on the 290 pension funds that were the subject of complaints to the Pension Funds Adjudicator (PFA) between September last year and September this year; he says.

Although Mamodupi Mohlala, the PFA, said earlier this week that she would be referring the scorecard's results to the FSB to "reconsider the continued licencing of the funds," Boyd says pension funds do not have licences but are required to be registered with the FSB. "We carry out a regular risk assessment of funds. Fund complaints and how the fund handles those complaints – in other words, the elements of the scorecard – form only one component of an overall assessment of a pension fund," he says. So, while the FSB will take the scorecard into account, it will feed into an overall risk assessment process, Boyd says.

A pension fund can be placed under curatorship, if during an investigation into the fund, evidence of maladministration or misappropriation of funds is uncovered. In such cases, Boyd says, the FSB would apply to the courts for a curatorship order – removing the board of trustees and replacing it with a curator. "Depending on its rules, a fund can also apply to the FSB for voluntary liquidation. Or, if the situation warrants it, the FSB can approach the court to place a fund into liquidation – for example, a dormant fund with no board of trustees but with assets and liabilities, he says. Although the FSB has the power to suspend or withdraw the licences of fund administrators, Boyd says this would depend on a number of factors, of which the scorecard would not be one; because the scorecard assesses funds and not administrators.

NOT ENTIRELY ACCURATE

Leanne Dewey, the group legal executive at Liberty says although it is right for a consumer complaints tribunal to make its findings transparent, this brings with it the obligation to ensure that information is presented accurately and fairly and can be used to drive improvements. "Although we do believe that some of the scoring methods used could be refined, we appreciate that this is the first step in what will no doubt be a regular feedback mechanism," Dewey says.

Leanne van Wyk, the group legal counsel for Alexander Forbes, says although it is good for the PFA to provide feedback to the industry, she is not sure about the ratings used and whether they are a true reflection of a fund's performance. "For example, part of the scoring relates to settlements, but, in terms of most fund rules, they are not allowed to negotiate any kind of settlement with a member after they have made a decision or, for example, paid out a benefit," she says. Van Wyk also says she is surprised that only one fund passed the scorecard, as this does not reflect her experience of how funds respond to complaints to the adjudicator.

“This [the scorecard] has led to a negative perception of the pension funds industry in general and many of those funds named in the scorecard as poor performers. One of those funds named is confused, because all complaints against it have been dismissed by Mohlala, yet it has been given a poor rating. Our information is that the adjudicator is not going to give funds their individual assessments. If this is the case, this is inappropriate where these funds have been publicly named and now have no way of assessing the Fund’s score or defending their position,” she says.

SECURITY FUND DOES IT AGAIN

Mamodupi Mohlala, the Pension Funds Adjudicator (PFA), this week issued yet another default determination against the Private Security Sector Provident Fund (PSSPF) and its administrator NBC Holdings. Nceba Matiwane, an employee of Khulani Fidelity Security Services, complained to the adjudicator after the fund failed to pay out a disability benefit. Matiwane was injured in a car accident in June 2004. The injury left him permanently blind in one eye and unable to perform his duties.

As with previous complaints to the PFA against the PSSPF, both the fund and NBC Holdings failed to respond to the request from the adjudicator’s office for more information. Mohlala ordered NBC Holdings to calculate the value of the disability benefit Matiwane would have received if his claim had been submitted to the insurer, and to inform the fund and the PEA of the benefit within seven days of the ruling. The PSSPF was ordered to pay the benefit plus interest at a rate of 25 percent until the date of payment, within 14 days of the ruling. The adjudicator also ruled that Matiwane may approach a court to obtain a warrant of execution if the fund fails to make the payment in line with her ruling.

What the scorecard says about your fund

If you are thinking of changing your retirement fund or have started working and want to know which funds to avoid, you should take a closer look at the scorecard for funds released this week. The scores for each fund can be found on the website of the Pension Funds Adjudicator (PFA), www.pfa.org.za. (Go to “News and media”, then “Media articles” and then “Current articles”.) The scorecard assesses the performance of 290 retirement funds (including pension funds, provident funds and retirement annuity funds) that had complaints lodged against them with the PFA between September last year and September this year.

There are about 13000 registered and 6500 active pension funds in South Africa. Funds were assessed in terms of the type of complaint received, the details of the complaint, the quality of the fund’s response, whether the fund made any attempt to settle the complaint before it reached the PFA and the outcome of the complaint. The only fund to pass the overall assessment pass mark of 70 percent was Liberty Lifestyle Retirement Annuity Fund. The scorecard’s results show that the professional cost of each determination was between R3 500 and R30 000 (an average of R10 000), while the professional cost of conciliation services (introduced by the PFA last year to clear the backlog of complaints) was R3 500 a complaint.

Ten funds were the subject of 67 percent of the complaints dealt with by the PFA in the past year. These funds are the; Private Security Sector Provident Fund, Central Retirement Annuity Fund, Lifestyle Retirement Annuity Fund, South African Retirement Annuity Fund, Professional Provident Society Retirement Annuity Fund, Momentum Retirement Annuity Fund, Metal Industries Provident Fund, Contract Cleaning National Provident Fund, Metropolitan Life Retirement Annuity Fund and Corporate Selection Retirement Fund.

<http://www.libertycorporate.co.za/news-and-views/Documents/business-news/20091201-personal-finance-independent-newspapers-national-p1.pdf>

City Press – Andile Ntingi - MOHLALA TAKES ON PENSION ADMINISTRATOR – 10/03/2009

OUTGOING pension funds adjudicator Mamodupi Mohlala said black-owned administrator Negotiated Benefit Consultants was involved in about 70% of complaints that ended up in her lap. In the past two weeks alone Mohlala issued 410 determinations against NBC and its client, Private Security Sector Provident Fund (PSSPF), making it the most delinquent administrator in the country by far.

There are 329 licensed administrators in the country. More than two-thirds of complaints from aggrieved pension fund members involve NBC. "About 70% of matters that we deal with in my office involve NBC and the funds that it administers. "The company needs to change its ways because the sad part about this is that it is dealing with blue-collar workers, many of whom are illiterate and are paid very little. "They cannot afford this kind of treatment," said Mohlala.

She added that most of the complaints were from pension fund members who had had their claims for withdrawal and disability benefit payouts repudiated or were moved from pillar to post before they were eventually paid out. There were a few cases where members were overcharged on the pension-backed homeloans they received from NBC's homeloans subsidiary. Mohlala said NBC had a tendency of not responding to correspondence from her office regarding the complaints.

The revelations have angered Cosatu, the country's labour federation. It called for the Financial Services Board (FSB) to probe NBC and withdraw its licence if it was found to have violated its licence conditions. "Why are the trustees of these funds not reporting this to the FSB? This can't be happening at the expense of the members," said Jan Mahlangu, Cosatu's retirement funds co-ordinator. Mxolisi Mbekwa, the managing director of investment consulting firm Selekane, was also shocked by the high number of complaints.

"If these figures are accurate, this means that there is a serious problem with NBC's administration because this is completely unacceptable. "This means that the adjudicator spends about 70% of her time disciplining one administrator," Mbekwa said. NBC is owned by businessman Max Maisela and administers 168 pension funds. Tony Mercer, an executive director at NBC, said he could not comment on the matter because the company had no specifics on Mohlala's "allegations". He said it was not true that the administrator was not responding to the adjudicator's request for responses to the complaints.

"NBC handles most of the adjudicator's complaints brought against its client funds and either responds to them after taking instructions from the trustees or refers these to lawyers at the insistence of the trustees," he said. About two weeks ago, Mohlala – who is quitting her job at the end of the month – issued a ruling in which she ordered PSSPF and NBC to settle a matter with security guard Mandla Tom, who was overcharged on his home loan by R17 000. The administrator and the fund were ordered to pay the amount plus 25% interest to Tom.

In October 1999, the guard took an R8 000 housing loan with NBC. According Mohlala's calculations the loan was settled in July 2003 to the tune of nearly R11 700, including interest and administration costs. However, Tom carried on servicing the loan until March last year, eventually paying R28 800. In her determination on the matter, Mohlala was scathing, accusing NBC and PSSPF of maladministering Tom's benefit and enriching themselves at his expense. She added that the respondents (NBC and PSSPF) were "benefiting from an unlawful and negligent act".

"The conduct of the respondents is of such a nature that it causes them to be unjustifiably enriched," she wrote. NBC said it would challenge Mohlala's ruling and sue her for defamation. Mohlala said this week that any complaints involving the pension-backed homeloans fell under her and the FSB's jurisdiction.

<http://152.111.1.87/argief/berigte/citypress/2009/10/03/CP/1/an-NBC.html>

Business Report – Last-placed pupil in pension fund class to sue adjudicator and her office – October 5 2009 – 10:51pm

NBC, the black-owned employee benefits company which runs what has been named as South Africa's worst pension fund, has started legal proceedings against the Office of the Pension Funds Adjudicator (OPFA), which made the accusation.

NBC administers the Private Security Sector Provident Fund. This fund was placed last in the OPFA's first scorecard of the industry, which was launched last week.

The company said it was also taking legal action against Mamodupi Mohlala, the outgoing pension funds adjudicator, in her personal capacity, in response to "the damaging media coverage" it was subjected to last week.

"Following the release of the results of the OPFA scorecard on September 28, the office continued making statements prejudicial to NBC," the company said in a statement.

In another attack, the National Union of Metalworkers of SA (Numsa) said the OPFA was painfully inefficient. Numsa, which has members in provident funds with assets in excess of R100 billion, said on Friday that the office often summoned funds for cases that had already been dealt with more than three years earlier.

The NBC-run Numsa Staff Provident Fund was also listed among the 20 worst performing funds by the OPFA.

Mohlala said the 20 worst performing funds faced the prospect of having their licences revoked by the Financial Services Board (FSB). She told Business Report last week that the worst-rated funds would be turned over to the FSB, which would then take a decision on whether to reconsider their licences.

The NBC did not want to reveal more details about its legal challenge last night to Business Report, saying it would do so at a media briefing today.

Attempts to get comment from Mohlala were unsuccessful. She has been appointed as director-general of the Department of Communications.

Other poor performers, administered by other managers, included the Motor Industry Pension Fund, Denel Retirement Fund, Reckitt Benckiser Retirement Fund, Smollan Group Pension Fund and the Sanlam Retirement Fund.

Referring to the worst performers last week, Mohlala was quoted as saying: "There are clear indications that the funds are failing to meet the standards required of them."

Numsa said that the statement that its provident fund was among the worst performers had no substance.

Sam Tsiane, the benefits co-ordinator at Numsa, said the union was not consulted about the scorecard, which did not address the challenges facing the industry.

"The key challenge is the number of employers who do not pay the contributions to the funds though they deduct money from the workers' wages," Tsiane said.

Numsa had trustees in the retirement funds for the metal, new tyre and motor industries, which "together represent half a million workers and there has been not a single ruling against all these funds", Tsiane added.

Mohlala has been appointed as director-general of the Department of Communications.

<http://www.iol.co.za/business/news/last-placed-pupil-in-pension-fund-class-to-sue-adjudicator-and-her-office-1.820949#.U3CzI2eKt8>

NewsMonitor – Andile Ntingi – Pension Firm Fights Back – 20 December 2009

NBC mounts legal challenge against Financial Services Board

Trustees should be fighting non-paying employers. NBC's job is to receive the funds, keep proper records and pay benefits to members'

PENSION funds administrator Negotiated Benefit Consultants (NBC), is fighting back against the Financial Services Board (FSB) after the regulator said the black-owned firm would be investigated for alleged irregularities in one of the funds it used to administer. On Thursday NBC served legal papers on the FSB but refused to comment on the contents of the documents. After receiving the papers the FSB declined to comment, after initially agreeing to an interview. "The case has been appealed by NBC. We have received legal papers from them and therefore we cannot comment on the matter because it is now sub judice," said Dube Tshidi, the registrar of pension funds.

The showdown follows the FSB's decision last week to replace the entire board of trustees of the Private Security Sector Provident Fund (PSSPF) after its on-site investigation uncovered serious governance failures in the management and administration of the fund. The regulator then instructed the fund's new board, led by pension fund lawyers Jonathan Mort (chairperson) and Francisco Khoza (vice-chairperson), to probe some of the findings from the investigation, particularly the red flags around trustee-related expenses and remuneration as well as alleged irregularities by PSSPF's administrator, NBC.

Mxolisi Mbekwa, managing director of investment consulting firm Selekane, said the FSB would have a hard time pinning PSSPF's problems on the NBC. "I think NBC is taking these steps because it feels it has been singled out or treated unfairly. It is a challenge to administer the fund, and some of its problems cannot be blamed on NBC's incompetence. "The trustees of the fund should be fighting non-paying employers. NBC's job is to receive the funds, keep proper records and pay benefits to members," Mbekwa said.

The PSSPF, which represents 200 000 security guards and has R1.1 billion in its coffers, has been dogged mainly by problems relating to fund contributions since its inception in 2002. These involved claims that employers deduct pension contributions from members but fail to hand them over to the administrator. At present the fund is receiving contributions from only 100 000 members, according to receipts from NBC.

<http://www.newsmonitor.co.za/newsmonitor/view/newsmonitor/en/page28457?oid=1213922&sn=Article%20Detail&pid=558&highlight=>

The Star (Business Report) – Bruce Cameron – Control row rocks NBC-run provident fund; zz Member benefits unpaid – January 25, 2010

Beleaguered retirement fund administrator NBC faces court action for refusing to hand over administrative control of the 150 000 member Private Security Sector Provident Fund (PSSPF) to new administrators.

In the meantime hundreds of members and dependants of members of the fund, which is one of the largest occupational umbrella retirement funds in the country, are waiting for benefit payments.

NBC's resistance comes despite the fact that the black empowerment firm publicly announced last year that it was resigning as administrator after it was criticised by the then Pension Funds Adjudicator, Mamodupi Mohlala, for its administration of the fund. ...

<http://business.highbeam.com/407747/article-1G1-217363015/control-row-rocks-nbc-run-provident-fund-zz-member-benefits>

The Star (Business Report) – Administrator has long history of challenges – January 25, 2010

NBC, which was spun off by industry giant Alexander Forbes as an empowerment company in the 1990s, has had a series of confrontations with the industry regulators and competitors, including:

I Last year Mamodupi Mohlala, the Pension Funds Adjudicator at the time, rated the company as one of the worst administrators in South Africa because of its shortcomings in dealing with member complaints, particularly those that concerned the Private Security Sector Provident Fund;

I On two other occasions NBC has refused to hand over data to new administrators. In 2008 the Durban High Court authorised the sheriff of the court to enter the premises of NBC to seize data of the Rainbow Provident Fund if it was not handed over to new administrator Robson Savage. ...

<http://business.highbeam.com/407747/article-1G1-217363016/administrator-has-long-history-challenges>

The Star (Business Report) – Bruce Cameron – NBC agrees to give fund data to Absa – January 27, 2010

... pension fund administrator NBC has done an apparent about-turn on its refusal to hand over data on the 150 000-member Private Security Sector Provident Fund (PSSPF) to new administrators.

NBC yesterday issued a statement saying that Business Report's Monday article on the NBC's refusal to give the PSSPF records to the new administrator, Absa Actuaries & Consultants, "is simply not true".

This is despite NBC chief executive Max Maisela confirming last Thursday that NBC was refusing to hand over the data.

Jonathan Mort, the chairman of the new PSSPF trustee board, yesterday confirmed that NBC had first resisted handing over the fund data, but had agreed to do so on Friday. ...

<http://business.highbeam.com/407747/article-1G1-217513537/nbc-agrees-give-fund-data-absa>

Sunday Tribune – Fred Kockott – Government's laxity puts security industry at risk, say firms – March 21, 2010

THE future growth and stability of the security industry is being jeopardised by the government irregularly awarding contracts to companies that are not fully compliant with the law and associated regulations, warn industry stakeholders.

In Durban alone, up to 3 000 security guards at established security firms could soon lose their jobs if the city proceeds with its award of a new security tender to chosen companies, including two enterprises owned and run by a husband-and-wife team, and two other entities that are allegedly not even registered with the private security regulatory authority.

While city manager Mike Sutcliffe has declined to comment on the issue, it appears that only one of nine companies chosen to provide security services in and around Durban over the next two years is fully compliant with all relevant legislation and regulations, and also up to date with payments made to the Private Security Sector Provident Fund. ...

<http://business.highbeam.com/132633/article-1G1-221694721/government-laxity-puts-security-industry-risk-say-firms>

Die Burger – Row brews over provident fund – Mar 23, 2010

A QUESTION hangs over the security of Command and Comwezi security workers' provident fund. At last week's strike in Maitland, workers expressed concern about whether provident fund contributions, deducted by their employer, were being sent to the fund correctly. In 2007, the Command Provident Fund was placed under curatorship by the Pretoria High Court, after the Financial Services Board claimed R2,2 million was deducted from staff salaries but not paid into the fund.

The provident fund was set up by Command Holdings prior to the company joining the Private Security Sector Provident Fund (PSSPF).

Negotiated Benefit Consultants (NBC), the previous administrator of the PSSPF, terminated its contract with the fund in October last year. NBC cited "ongoing problems", including "non-compliance by employers", as the reasons.

Absa Consultants and Actuaries then took over the fund, with effect from 1 January. Command Holdings CEO Mohammed Shaffie Mowzer alleges NBC owes Command Holdings more than R1,5m.

In September last year, the principal officer of the PSSPF, Peter Zibi, was quoted as saying: "It is a fact that numerous registered security companies defraud their employees by deducting monies from their wages and then claim that these contributions, together with the employers' contributions, are being paid to the fund." This resulted in many death, disability and pension payout claims being rejected. Dependent spouses and children, therefore, never received any financial compensation.

Attorney Jonathan Mort, the new chairman of the PSSPF, and a pension fund law specialist, says: “To say that 70% of employers are non-compliant would be a fair reflection.”

When asked about the employees’ provident fund, Harry Duffy, human resources manager at Command Holdings, said Mowzer was the only one with this information, although he agrees having such information is technically a function of his role as human resources manager. He could provide no contact details for the company managing the provident fund, other than to say it was Absa.

Mowzer says he will investigate “each and every allegation” regarding the provident fund, and asked People’s Post to provide him with details of every employee with queries in this regard.

<http://152.111.1.87/argief/berigte/dieburger/2010/03/23/PQ/23/tfcommand2-QD-MM.html>

Mail&Guardian – Maya Fisher-French – The growing role of graft and unethical practice – 30 Apr 2010 – 13:09

Inappropriate fees charged to pension funds could cost the funds as much as 0,2%, or R3-billion, a year, a pension fund expert has estimated.

Actuary Rob Rusconi said that South Africa has R1,7-trillion of pension fund assets under management.

Inappropriate fees arise from a number of sources, among them poor decision-making by trustees, misinformation by service providers and unethical behaviour across the industry—including corruption, as the Mail & Guardian’s SA Quantum revelations have highlighted.

Low levels of financial literacy and trustees’ lack of training are often to blame. But graft and unethical practices involving trustees and collective organisations at the expense of members are playing a growing role.

Umbrella structures, such as bargaining council or sectoral funds, which involve more than a single employer, are more open to abuse, as the funds pay running costs.

A high-profile example is the national provident fund of Cosatu’s commercial workers’ affiliate, Saccawu, which was placed under curatorship in 2002.

Curator Tony Mostert claimed that retirement fund money was lent to companies with connections to the trustees of both the fund and Saccawu’s investment arm. In addition, service providers to the fund, including Old Mutual, were required to pay commission to the union for signing on members.

Apart from corrupt deals, some trustees use members’ funds to supplement their salaries. In Saccawu’s case, what tipped off the regulator to possible irregularities was the suspicious fact that trustee expenses increased from R318 153 in March 2000 to more than R1,7-million a year later.

The Financial Services Board (FSB) recently removed the board of trustees of the Private Security Sector Provident Fund for, among other reasons, “the abuse of the trustees with regard to reimbursements”.

The Pension Fund Act does not prohibit the remuneration of member trustees. But Jurgen Boyd, the FSB's deputy executive officer, said that member trustees are given time off work to fulfil their duties and that it is inappropriate for the fund to pay them over and above their normal salaries, although reimbursement of costs is acceptable.

Abuses

Boyd said abuse can occur when trustees are remunerated for attending meetings, as this encourages them to meet as often as possible by setting up sub-committees.

Expenses are also an area of abuse and the FSB has encountered cases in which trustees organise meetings at five-star hotels, drink Johnny Walker Blue and stay the night—all at the fund's expense.

Over-claiming of travel expenses and hiring luxury cars are among the more common abuses. "Abuse is not widespread, but where we do find it, it is really excessive," said Boyd. He said malfeasance is more common in funds that have members who earn low salaries and where high expenses have a material impact on members' savings.

The FSB is investigating a fund where the average income of members is R4 000 a month, yet where members elected as trustees are being paid about R25 000 a month from the fund's coffers—effectively increasing their salaries fivefold.

When the FSB investigates abuse of reimbursements, it often has a full-blown investigation on its hands, as the trustees may be complicit in hiding abuses by service providers.

The administrator provides the single safeguard against trustee abuse, as it manages funds' running costs and can become a whistle-blower.

When a board is corrupt, trustees often award the administrator the business in return for kick-backs and turning a blind eye. The upshot is that members' retirement funds line the pockets of trustees and service providers. Generally, corruption comes to light only when there is a falling-out among thieves.

Even if the FSB intervenes and removes the board of trustees, it cannot force the trustees to repay the money. The fund then has to take legal action, at a further cost to members.

<http://mg.co.za/article/2010-04-30-the-growing-role-of-graft-and-unethical-practice>

The Star (Business Report) – Samantha Enslin-Payne – FSB seeks to shame pension cheats; zz Move is particular targeted at security and cleaning sectors zz Satawu says non-payment is widespread – May 21, 2010

Companies that do not pay their employees' pension or provident fund contributions to the relevant funds might be named and shamed by the Financial Services Board (FSB), a move that is particularly targeted at the private security and contract cleaning industries.

The FSB said yesterday that as the biggest culprits appeared to be employers in the private security and contract cleaning industries, it was considering publishing a list on its website of those recalcitrant employers who were in arrears in paying over the provident fund and pension fund contributions for their employees.

In terms of the Pension Funds Act, all contributions from the employee and the employer must be paid within seven days of the contributions falling due. ...

<http://business.highbeam.com/407747/article-1G1-226952077/fsb-seeks-shame-pension-cheats-zz-move-particular-targeted>

NGOPulse – Sash Can Assist With Unpaid PSSPF Claims – August 4, 2010 – 10:05

The Black Sash is calling on members of the Private Security Sector Provident Fund (PSSPF) who have unpaid claims to re-submit them to ABSA Consultants and Actuaries (ACA) as soon as possible. It follows assurances from the new administrator of the 150 000-member fund that they will process outstanding claims within two weeks of receiving them. Members can hand their claim forms in at any ABSA branch, together with a copy of their ID and a recent bank statement.

ACA was appointed in January by the Board of Trustees of the PSSPF - one of the largest occupational umbrella retirement funds in the country – following the resignation of NBC. Black Sash Advocacy Programme Manager Ratula Beukman says the human rights organisation has dealt with hundreds of complaints relating to the fund over the past few years.

“We estimate that there must be a backlog of around 60 000 claims countrywide, mainly from poor and vulnerable workers in the security sector. The new administrators have advised us that they can process benefit payments within two weeks if members re-submit their claims. Our provincial offices can help those who are struggling to navigate the system or fill in new claim forms or track down their original claims.”

While under the guardianship of NBC, the Private Security Sector Provident Fund was repeatedly referred to the Pension Funds Adjudicator, mainly over its failure to pay benefits to members and their dependents. Besides the administrative failings at NBC, the fund also suffered as many security firm employers either failed to register their staff as members or pay over their monthly contributions to the fund.

“It is particularly disgraceful that many of these private security firms who profit from our country’s high and violent crime rate, have failed to protect the financial future of those who risk their lives each day in order to make a living. We believe employers who fraudulently pocket the contributions of members and fail to pay over their monies to the fund should face prosecution. The Pension Fund Act should be amended to criminalise such a gross violation. We would strongly advise members to report these private security firms to the Pensions Fund Adjudicator or the Registrar of Pensions Fund Act,” insists Beukman.

In light of the injustices experienced by tens of thousands of members of the PSSPF, the Black Sash also calls on government to speed up the proposed social security and retirement reforms to ensure that they achieve effective regulation of the sector and protect the precious savings of workers as well as their social security rights.

Members who are having difficulty claiming their benefits from the Private Security Sector Provident Fund, can call the BLACK SASH HELPLINE 072-66 33 739 or email help@blacksash.org.za for FREE paralegal support and advice.

To find out more about your pension and provident fund rights, you can download and print out the Black Sash ‘You and Your Rights: Pension and Provident Funds’ flyer.

IOL – Bruce Cameron - What govt can learn from failure of security sector fund - September 4 2011 – 12:00pm

The interim board of trustees of the very troubled Private Security Sector Provident Fund (PSSPF) has reported to the Financial Services Board (FSB) and dissolved itself.

The saga of the fund and the experience of the interim board sounds a significant warning to the government in respect of its proposed National Social Security Fund (NSSF), membership of which the government wants to make mandatory for most employed South African residents.

Two years ago the PSSPF was imploding fast. It did not have a legally constituted board of trustees and had been labelled “the worst fund” in South Africa by then Pension Funds Adjudicator Mamodupi Mohlala, because it had about 1 000 outstanding complaints. It was in the process of moving from administrator NBC, and its member records were simply in a mess, with a large number of outstanding death benefit and withdrawal claims unpaid.

The FSB intervened in December 2009 and appointed an interim board with respected pension fund lawyers Jonathan Mort as chairman and Fransisco Khoza as the deputy chairman, backed by 10 trustees nominated by trade unions active in the sector and employers.

Reflecting on his experience as the chairman of the fund’s interim board, Mort attributes much of the chaos that existed at the fund, which to some extent still exists, to three main factors:

- * The inconsistent payment of member contributions by employers on behalf of members. (Inconsistent in terms of payments made and amounts paid.)
- * Short-term membership of the fund. Due to the nature of the industry, employment terms tend to be short and so too is membership of the fund. In the case of the PSSPF, membership is an average of 2.4 years, with only one percent of members reaching retirement, making the fund a short-to-medium savings arrangement with death and disability assurance benefits, and not a retirement fund.
- * An inefficient computer administration platform, with this compounding the effects of inconsistent payments and short-term membership.

It is these three factors that government will have to consider very carefully when it implements the NSSF, as the proposed fund will have much the same profile as the PSSPF: a large number of employers which each have, mostly, a relatively small but fluid workforce.

It is with the small employers, and those employers with a high turnover of staff, where the problems can lie, unless there is a very efficient administration system and an equally efficient enforcement system ensuring that contributions are paid in full and on time.

The PSSPF’s interim board found that non-payment or late payment of contributions by employers was not necessarily done with male fides. Many of the employers simply run hand-to-mouth operations. If they are not paid by clients then they are short of money to pay contributions on time, if at all.

The PSSPF is set up in terms of the Labour Relations Act. All security officers are required to be members with limited exemptions.

According to the Private Security Industry Regulatory Authority there were 387 273 people employed in the industry by March 2010 and 7 459 security companies.

But the monthly average number of employers from February to June this year was substantially lower. There were 555 employers who submitted contributions for 148 000 members; 318 employers who contributed without submitting the schedules of members in their employ; and 59 who submitted schedules of employee members but no contributions.

Mort says the interim board found “chronic non-compliance with the compulsory participation requirement”. The mis-match of employee member schedules and contributions is a “massive challenge monthly to reconcile not only the deposits relating to current contributions but also arrear contributions”.

The late payments impact on claims being made against the fund by members for both benefits on withdrawal from the fund or for assurance benefits when members die in service or are disabled.

Because of the problems with the payment of benefits, the interim board says, many employers resist participation in the fund.

The problem of administration is compounded by the fact that fund members pay many small amounts that need to be tracked.

The average annual pay of a security employee in February 2010 was a mere R26 027 and the average fund credit was R4 297, with a contribution rate of 7.5 percent of total pay being made by the employer and/or employee.

Mort says that because the average annual salary is so low, there is a desperate need for the withdrawal benefit to be paid in cash, rather than preserved, so that the member can survive until employment is found again. It is quite possible that this is typical of many in formal employment in South Africa. This highlights the problem of mandatory preservation of retirement savings.

The board found little resistance from fund members to fund membership, as the fund is seen as providing cheap death and disability benefits as well as funeral benefits. This is particularly important where many members may not survive to retirement.

The fund had a history of non-adherence to fund rules, problematic administration and poor governance, which the interim board resolved to a large extent.

Mort says the administration difficulties of the fund were, apart from the difficult environment in which it operated, due also to the inappropriateness of the administration platform, known as Ben-e-fit, owned by a company called SouthernX Software Solutions, on which the fund had been administered since inception.

The interim trustees decided to move from this computer administration platform to that of the new administrators of the fund, Absa Consultants and Actuaries, providing a litany of reasons for their decision.

The interim board and the FSB have done much to correct the underlying faults with the fund but conclude that the fund remains high-risk for many reasons.

The interesting thing about all this is whether the PSSPF will disappear into the government’s proposed NSSF, along with many other retirement funds.

Although it would seem to fit exactly the type of fund which should be folded into the NSSF, the historical and extensive involvement of unions in this fund may make that politically difficult.

Whatever happens, it is absolutely imperative that the government ensures that what transpired at the PSSPF is not duplicated with the NSSF.

It must ensure a world-class administration system and platform; and must ensure that there is an efficient collection and benefit payment system.

<http://www.iol.co.za/business/personal-finance/retirement/what-govt-can-learn-from-failure-of-security-sector-fund-1.1130500?ot=inmsa.ArticlePrintPageLayout.ot>

IOL – Bruce Cameron – Not our fault – software provider – September 11 2011 – 12:00pm

Retirement fund computer software provider SouthernX Software Solutions has challenged the conclusions of the outgoing interim board that its Ben-e-fit program was “inappropriate” for the much troubled Private Security Sector Provident Fund (PSSPF).

The view of the interim board was reported in Personal Finance last week.

The interim board, which was appointed by the Financial Services Board two years ago to tackle problems at the fund, has been in the process of transferring the administration system to that of Absa Consultants and Actuaries from the previous administrator, NBC.

Other issues that the interim board says caused problems were inconsistent payments of contributions by employers and the rapid turnover of membership, which, on average, lasts 2.4 years.

A director of SouthernX Software Solutions, Gary Hughes, who is a previous principal officer and trustee of the PSSPF, says many other factors contributed to the PSSPF’s problems and these “are not software related, but are due to the processes and people factors around this particular fund”.

Hughes says the fund has been on the same computer administration platform for 10 years using his company’s Ben-e-fit software. The software was used by Absa as a tactical solution while cleaning the data for transfer to its own platform.

He says initially Absa received a 12-month limited licence from his company to continue administering the fund until a full migration of administration could be completed. The licence was extended for another 12 months.

Hughes says that the sole reason for the proposed change of software systems is because Absa already had a core administration system – and not because of problems with the software.

Hughes claims that any problems with Ben-e-fit arose because the software was adapted by the PSSPF to meet its own requirements.

When the PSSPF administration staff left en mass in 2008, the information technology skills went as well “which resulted in a situation where there was an application that was supported internally now not being attended to with the required skills, and to manage the environment thereafter was challenge”.

Hughes says that his company is assisting in resolving administration problems to allow Absa to “catch up and put them in a position to migrate”.

“At no time was the software or its inappropriateness raised,” he claims.

<http://www.iol.co.za/business/personal-finance/retirement/not-our-fault-software-provider-1.1134774?ot=inmsa.ArticlePrintPageLayout.ot>

IOL – Bruce Cameron – IRF Briefs – September 11 2011 – 12:15pm

There are no rooms full of files lying unattended at the offices of the Pension Funds Adjudicator, says acting adjudicator Elmarie de la Rey.

De la Rey, who was speaking at the Institute of Retirement Funds annual convention this week, says that by the end of November she hopes to have finalised all complaints lodged prior to January 2009.

Her office, however, faces an additional 6 000 new complaints every year.

The remaining backlog is bedevilled by the Private Security Sector Provident Fund (PSSPF), where there are more than 1 200 unresolved complaints to which neither participating employers nor the fund have responded.

“Without any response it is difficult to make a fair determination that could lead to a resolution of the complaint,” De la Rey says.

But she says that where contributions and contribution schedules are outstanding from participating employers, the fund has a problem in providing answers.

The Financial Services Board (FSB) is using its powers effectively to ensure proper governance of pension funds, Jurgen Boyd, the FSB’s deputy executive in charge of retirement funds, says.

He says that, over the past year, the FSB has replaced the boards of trustees of a number of funds, while in extreme cases it has applied to the High Court to place funds under curatorship.

Funds that have had interim boards appointed in terms of the Pension funds Act to protect members in the past year are: the Bargaining Council for the Contract Cleaning Industry (Natal) Provident Fund; Private Security Sector Provident Fund; Impala Platinum Supplementary Pension Fund; Amrel Pension Fund; Diepmeadow Pension Fund; Grain Industry Provident Fund; Electrical Contracting Industry Pension Fund; Electrical Contracting Industry Provident Fund; Construction Industry Retirement Benefit Fund; Impala Workers Provident Fund; and the Sasol Coal Provident Fund.

Boyd rejected suggestions from conference delegates that the FSB did not take strong enough action.

He says that when it is warranted, matters are reported to professional bodies such as the Law Society, and to the National Prosecuting Authority.

“The regulator cannot send people to jail. It is not our role,” Boyd says.

The final distribution of surpluses from retirement funds is likely to be about R40 billion – about half the original estimate of R80 billion, the FSB chief actuary, Marius du Toit, says.

He says altogether surplus distribution schemes have been approved from 1 600 funds, with about 200 awaiting approval. There were 21 000 funds that submitted nil-surplus schemes for approval.

<http://www.iol.co.za/business/personal-finance/retirement/irf-briefs-1.1134778?ot=inmsa.ArticlePrintPageLayout.ot>

Today’s Trustee – An Unholy Mess – September-November 2011

Thankfully, however, big strides have been made in cleaning up the PSSPF. There's a way still to go.

It's with good reason that the Pension Fund Adjudicator once identified the Private Security Sector Provident Fund as the worst in SA. The report of the interim board, appointed by the Registrar almost two years ago, is a litany of horror stories; so much so that it should be made publicly available on the Financial Services Board website as a case study for trustees to learn precisely how a fund should not be run.

Submitted to the Registrar in August when the term of the interim board expired, the report details exhaustive remedial efforts to purge the legacy of the previous board. It's replete with details of governance, administration and legal compliance all gone seriously wrong.

It isn't exactly complimentary of previous service providers either. In particular, NBC hardly emerges with colours flying for the wonky administration platform largely to blame. Neither can employers take pride in their lackadaisical provision of contribution schedules, to the extent that they actually made obligatory payments at all.

Those who ultimately suffered, mainly from shambolic record keeping, were of course the PSSPF members and their families reliant on withdrawal benefits and processing of death claims. When the interim board took over, there were about 1 000 backlog complaints with the Adjudicator.

During its term the interim board responded to 850 backlog complaints, more than 600 new complaints.

The interim board is not yet comfortable with the level of benefit administration, says chairman Jonathan Mort: "The benefit administration problems are on the way to improvement but cannot yet be said to have been resolved adequately."

If that doesn't strike a chord in the comfortable theorising about mandatory preservation of retirement savings, nothing will.

Inhospitable remarks

There's a little storm at trade union-based Hospitality & General Provident Fund. It arises from the fund's annual report being "modified" by auditors BDO on grounds that investments had been incorrectly accounted for i.e. not on the market-value basis that the FSB requires. Further, fund rules don't allow for the R8,4m "debit reserve account".

The fund trustees and administrator Borwa Financial Services shot back a lengthy response. They say that, if you are up in the equity market and then two weeks later the market falls, and you must liquidate on that date, "it will be disastrous and any liquidator would have to hold on until the market improves".

Moreover, the HGPF is an umbrella fund. This makes it impossible to liquidate because 840 employers would have to agree simultaneously to terminate. So long as a fund has strong cash flows, they say, it can effectively "go on forever".

http://www.totrust.co.za/29082011_currents.htm

Personal Finance – Bruce Cameron – Adjudicator signs off 1 430 pension fund cases – October 9 2011 – 12:05pm

About 60 percent of complaints to the Pension Funds Adjudicator (PFA) are about the withdrawal benefits retirement fund members receive when they leave a job before retirement.

Of the 1 430 signed determinations in 2010/11, the acting adjudicator, Elmarie de la Rey, ruled in favour of 118 complainants.

A substantial number of these related to employers who have failed to pay contributions to the Private Security Sector Provident Fund.

This is revealed in the 2010/11 annual report of the PFA.

Other complaints were about death benefits (9.64 percent), retirement benefits (7.8 percent), divorce settlement benefits (2.61 percent), ill health and disability benefits (2.44 percent), transfer of benefits to other funds (1.71 percent) and early retirement benefits (1.57 percent), with a variety of other complaints making up the balance.

As at March this year, there were 8 268 complaints on the books, with 6 123 complaints finalised and 6 220 cases being added to the 8 171 complaints of the previous year.

Of the complaints resolved, 894 were settled by conciliation, 1 430 were resolved with determinations made by the adjudicator, and 3 799 were resolved without requiring a determination.

De la Rey says that judging by the substantial decline in the number of determinations taken on review to the High Court when compared to previous years, as well as listening to feedback from stakeholders, she is satisfied that there is renewed respect and confidence in the determinations made by the PFA.

She says, however, that turnaround times in resolving complaints remain a challenge.

Much has been done to improve the situation, with further improvements being planned for the case management system, including the development and implementation of customer relationship software as well as the ongoing skills development of all staff members.

She says one of the operational improvements implemented in April last year was the formation of a dedicated team in the adjudication unit to deal with complaints lodged before April 2008. This has successfully reduced the number of unresolved old complaints.

It is anticipated that this team will finalise their task and that all complaints lodged prior to January 2009 will be resolved by the end of November 2011.

The adjudication team dealing with complaints lodged before April 2008 has been able to resolve 584 complaints.

<http://www.iol.co.za/business/personal-finance/retirement/adjudicator-signs-off-1-430-pension-fund-cases-1.1152945#.U3Crr2eKct8>

Personal Finance – Bruce Cameron - Admin foul-ups trap members in badly run umbrella funds – February 10 2013 – 12:25pm

Members of umbrella retirement funds may be disadvantaged by the administrators of these funds using their failures or those of participating employers to prevent funds from switching to another administrator.

This has been revealed by the ongoing problems at Aon Hewitt South Africa, the local subsidiary of United Kingdom-based Aon, the world's biggest retirement fund administration company (see "Fund still waiting to be transferred to another administrator", below).

When a participating employer applies to be transferred to an umbrella fund that it believes will be more efficiently administered, the administrator of the fund can rely on various administrative and legal requirements to block the transfer.

Transfers of participating employers from one retirement fund to another are known as section 14 (of the Pension Funds Act) transfers. The transfer must be signed off by the valuator of the retirement fund, after which it is submitted to the Financial Services Board (FSB) for approval.

The FSB may declare an umbrella fund to be valuation-exempt. Where both funds that are party to the transfer are valuation-exempt, a valuator does not have to be appointed. In this case, the transfer process is known as a "recognition of transfer".

Jaco Kok, chief executive of Aon Hewitt, concedes that by not meeting the requirements for a transfer to be effected, participating employers that want to move could be held captive. But, he says, Aon is providing services free to participating employers that have applied to be transferred until such time as the transfers can be effected.

"Aon has no incentive to keep a (transferring) fund on its books any longer than it needs to, and indeed the sooner we can move it on the better it would be for Aon from a resourcing and financial point of view," Kok says.

Jurgen Boyd, FSB deputy executive in charge of pensions, says the valuator of a fund may refuse to sign off the transfer of a participating employer for whatever reason the valuator deems material, which may include outstanding financial statements and/or statutory actuarial valuations.

The FSB will query a transfer application where it is based on an incorrect or outdated actuarial valuation, Boyd says.

The requirements of the registrar of pension funds at the FSB, and the valuator's qualifying his or her certification, may delay the transfer of a participating employer from one umbrella fund to another.

Reasons for outstanding financial statements or valuations include the inefficiency of the fund's administrator, or a participating employer not providing sufficient information about its employees and their contributions and/or not performing a proper reconciliation of members and contributions.

Poor administration of retirement funds by service providers has been fairly widespread.

The Private Security Sector Provident Fund has had ongoing problems with both its administrator and participating employers.

The FSB eventually placed the fund under management and the administrator was switched from NBC to Absa.

In 2010, Glenrand MIB liquidated its administration company, Glenrand Benefit Services, to escape its liabilities to 80 000 members of 20 retirement funds, the records of which had been left in a mess.

The FSB put Old Mutual on notice a few years ago, when its Orion umbrella fund – the first and biggest umbrella fund in the country – began to experience severe administrative difficulties.

In December 2011, the FSB suspended Aon Hewitt South Africa from taking on new retirement fund business. The suspension, which was lifted in July last year, was imposed because of numerous problems with the administration of its stand-alone and umbrella retirement funds.

Aon Hewitt's woes in part arose when it took over the administration of four Dynam-ique Consultants and Actuaries umbrella funds, which were riddled with problems.

The four funds are still subject to major disputes because of the costs incurred by members to rebuild the records of the funds.

Boyd says the suspension on Aon Hewitt's taking on new business was lifted once the company had addressed regulatory concerns satisfactorily; independent auditors had confirmed the

appropriateness of Aon's new administration systems; and the FSB was satisfied that any new business would not be affected by the problems experienced by the existing funds.

"Whilst legacy problems with certain existing funds remain to be resolved, Aon is under enhanced supervisory oversight regarding the resolution of these problems," Boyd says.

Kok says: "As the biggest global administrator of pension benefits, with a strong international reputation, we are committed to putting right anything that might have gone wrong in the past, and to use this as a springboard to set a new benchmark for the level of service and value for money available to South African retirement funds."

WHAT IS AN UMBRELLA FUND

Umbrella funds enable groups of employers, known as participating employers, to join a single retirement fund. The main motivation for an employer to participate in an umbrella fund is that the employer does not have enough employees to make it cost-effective to sponsor its own retirement fund. The objective in becoming a participating employer is to reduce costs and the administrative burden.

There are two types of umbrella retirement funds:

* **Administrator-sponsored funds.** Administrators (normally major financial services companies) provide most or all of the services to the fund. Different employers sign up as participating employers, with each a sub-member of the umbrella fund. The employer in effect signs up its employees, who become members of the umbrella fund.

The decision to join or leave an umbrella fund lies with the participating employer, not a member employee. Normally, the decision is made in conjunction with the employees, and in terms of the rules of the fund.

* **Sector funds.** These funds may be sponsored by a trade union, an employer grouping or both, or a financial services provider. Membership of the fund is restricted to employees in a particular industrial or commercial sector. These funds normally outsource services to private sector service providers that have been approved by the Financial Services Board.

FUND STILL WAITING TO BE TRANSFERRED TO ANOTHER ADMINISTRATOR

Leading commercial and industrial property investment company Improvon decided to provide its employees with a retirement-funding vehicle, settling on the Aon Umbrella Provident Fund. Grenville Phillips, Improvon's human resources executive, says: "From the start, we had shoddy service, to say the least."

Improvon joined the Aon Umbrella Provident Fund on January 1, 2009. Initially, it deposited employer and employee contributions into Aon's bank account, before its own bank account for contributions and benefit payments was set up on March 31, 2009.

The contributions were transferred from the account to the fund's asset manager only on May 8, 2009.

Jaco Kok, chief executive of Aon Hewitt, says the Improvon members actually scored from the delay in having their contributions transferred to the asset manager.

"If you consider equity market returns for the first four months of 2009, by reference to the JSE All Share Index, you will find it to be a negative four percent over the period," he says.

Phillips says the non-investment of the contributions "only came to light when we contacted the asset manager directly to find out how our assets were doing, after being sent from pillar to post by

the administrator, Aon Hewitt. We were told by the asset manager that they had not received any Improvon contributions from Aon.

“After many other problems, we gave them notice in August 2011 to move our fund to 10X Investments, effective December 1, 2011. Yet to date the fund has not been transferred, 14 months after notice was given.

“We are at our wit’s end, and our staff are understandably very concerned about their pensions.”

Kok says the problems with the Aon Umbrella Provident Fund are not “all of our own making”.

He says in June last year, while trying to sort out the fund’s administrative problems, Aon discovered that there were problems with the contributions that another participating employer had transferred to the provident fund.

The employer had transferred its segregated fund to the Aon umbrella fund, and there had been administrative problems with this fund before it was transferred. The employer was unable to provide correct information about the contributions to the fund. This resulted in the audits and valuations of the Aon umbrella fund falling behind.

Kok says that 12 section 14 transfers relating to four participating employers have been affected by the Aon umbrella fund’s problems.

Jurgen Boyd, Financial Services Board (FSB) deputy executive in charge of retirement funds, says the FSB was approached by Improvon and, following talks between Aon and the FSB after the FSB had conducted a compliance review, it was agreed that the troublesome participating employer should be ring-fenced and the fund should get on with the transfers.

Improvon can now expect the transfer to the 10X Investments provident umbrella fund to take place only later this year. This is despite Aon undertaking in its contract to effect section 14 transfers within six months and Aon’s arrangement with the FSB.

Kok says the valuator has declined to sign off on the umbrella fund at the moment. “I recognise the authority and discretion of the valuator in this regard, as their role is to safeguard the interests of all members of the fund,” he says.

Kok says that since mid-2011 Aon has invested significantly in systems, people and processes to resolve legacy and ongoing administrative issues.

“The issues experienced by Improvon are part of the legacy problem,” Kok says, and the problematic part of the fund has been ring-fenced while attempts are made to resolve the issues.

The FSB has, however, lifted a ban on Aon taking on new business.

<http://www.iol.co.za/business/personal-finance/retirement/admin-foul-ups-trap-members-in-badly-run-umbrella-funds-1.1467069#.U3CrNmeKct8>

Sowetan Live – Security guards robbed of millions in pensions – Thuli Zungu – 15 Apr 2013

Thousands of security guards may have been robbed of their pension money by their employers.

This comes after the Private Security Sector Provident Fund - which administers the pension monies deducted from the salary of guards - admitted that it is in shambles.

The fund needs to recover almost R34-million from employers who allegedly pocketed provident funds after debiting it from their salaries.

By 2012, employers of security guards owed over R45-million they had deducted from salaries and had not passed it on to the fund.

As a result, beneficiaries of deceased employees, including those who were dismissed or had resigned, get little or no payout from the fund.

The fund's principal officer Mziwandile Zibi said the fund is aware of the consistent non-compliance by some employers who are in arrears with their contribution.

"In response to this, the new board (of trustees) of the fund, commencing in 2012, embarked on a recovery and clean-up initiative which has yielded positive results," he said.

He said that since last year the fund has managed to identify a number of companies that were not complying with the fund.

Zibi said the board had recovered about R11-million since last year.

He said they are in the process of recovering the outstanding amount of R33.9-million from the defaulting companies, who have entered into acknowledgement of debt agreements.

He also said there are over 100 applications that are currently before the court to order companies to pay the fund.

A further four will be issued shortly.

Last Wednesday's article in Sowetan titled "Protect security guards" detailed the exploitation endured by security guards at the hands of their employers.

Maxima Safeguard Security is one of these companies and is accused of deducting almost a R1-million from employee's salaries.

The aggrieved employees of Maxima Safeguard Security complained that though their employer, Albert Ludorf, in his capacity as a surety and a member of Maxima Safeguard, undertook to repay R537410 he has deducted from employees since 2009 but he has not honoured this promise.

Maxima Safeguard Security, through its attorneys Gerhard Mare & Associates, has also admitted its indebtedness to the provident fund, but blamed non-payment to the fund on an employee who allegedly defrauded them while working in their finance department.

"The previous employer (sic) working in the financial department of our client fraudulently applied certain payments to her account," Mare said.

"Once this was discovered the necessary steps were taken."

He said Maxima had put a fixed property on the market with the intention of repaying the fund with the proceeds of the sale.

Mare also added that the company was doing its best to resolve the problem.

Siziwe Zuma, the communications manager at the Private Security Industry Regulatory Authority, said the authority was not aware of any complaints about Maxima's failure to pay fund monies over to the security sector fund.

"We have a number of convictions against this business and the last one relates to an inspection conducted in 2010 where it was found that a member of the business was not registered," she said.

"In a 2009 case, the business was also charged for failure to pay minimum wages."

She said the employer in this case settled on a fine of R190000 in February 2011.

"As the authority we will also conduct an inspection at this business again."

Last month consumer line reported claims that 23 security guards at Urban Genesis had their pension monies missing.

Zibi said he would investigate the matter. Urban Genesis denied any wrongdoing.

<http://www.sowetanlive.co.za/helpline/2013/04/15/security-guards-robbed-of-millions-in-pensions>

Moneyweb – Spotlight on private security sector and its provident fund – Kentse Radebe – 22 April 2013 – 00:55

Pension fund non-compliance - a criminal offence, shareholders could take the fall.

JOHANNESBURG - In an ironic twist, over 8 000 private security companies may be facing jail time for failing to comply with the Pension Fund Act (PFA). These private security companies are not making contributions to the Private Security Sector Provident Fund (PSSPF) administered by Absa Consultants and Actuaries (ACA).

Controlling shareholders, executive directors, members of close corporations, trustees and partners of non-compliant security companies should prepare to take the fall for employers who are non-compliant with the proposed amendments to the PFA. The new amendments, under the Financial Laws General Amendment Bill 2012, aim to make it criminal to be a non-compliant employer.

According to PSIRA there are 9 039 private security companies in South Africa. But Cobus Bodenstein, chairperson of the fund and security services director at Strategic Partners Group says that only 480 registered security businesses are making contributions to the fund.

Under the proposed amendments to the PFA, it will be a criminal offence for employers to deduct contributions from employees and not make contributions to the retirement fund. Tim Rutherford, audit director at Ernst & Young says that employers and workers need to make contributions that are forwarded to the fund by the employer.

However the private security sector has had a history of non-compliance which affects beneficiaries who are left destitute. Employee benefits company NBC was the previous administrator of the fund until 2009, and its executive director, Tony Mecer, said that "one of the primary reasons NBC terminated its relationship with PSSPF was that the serial non-compliance of employers made administering the fund to our standard of administration almost impossible."

Background to the PSSPF

The administration of the PSSPF was taken over Absa Consultants and Actuaries in January 2010. Recently, the Pension Fund Adjudicator pointed out the fund had one with the highest number of member complaints. However the fund disputed this as the number of the adjudicator did not match its records. The Pension Funds Adjudicator, Muvhango Lukhaimane hopes that the discrepancies can be resolved when she meets with a representative of the fund on May 8 next month.

This week the fund entered into a litigation process with NBC. The litigation was prompted by a routine compliance visit by the Financial Services Board (FSB) in 2009 and a report was issued. Cornelia Buitendag, FSB surveillance and enforcement head of department, says that “the report highlighted various governance failures and that the term of office of the board expired, in terms of the Fund rules, on 31 August 2009.”

The process is on-going and Anesh Soonder, of Soonder Incorporated, the law firm working with the fund to deal with non-compliance and beneficiary complaints, expects that it might be a drawn-out process. The PSSPF was not prepared to discuss the merits of the case against NBC as the fund was of the view that it was inappropriate to do so currently.

Rutherford says that the beneficiaries should not be affected by the litigation process, especially if the fund is only trying to recoup monies that it feels were not passed over by the previous fund administrator.

Types of non-compliance in the fund

Bodenstein says that there are different kinds of non-compliant cases and can broadly fall into five different categories:

- Employers not registered with the fund, not taking any deductions from employees and not making any payments to the fund.
- Employer not registered, collects monies from workers but does not pay it over to the fund.
- Employer registered with the fund, but doesn't make any contributions to the fund.
- Employers registers with the fund, but only pay limited number of member contributions in order to cut costs.
- Registered with the fund, paying member and employee contributions however misses payments every now and then.

Soonder says that fund has secured R43m from non-compliant employers through the recovery process that was rolled out eight months ago.

Asked whether the fund can name and shame non-complaint companies, Soonder says that this will certainly happen when the fund reports on the outcome of the various pending litigation matters it has initiated.

<http://www.moneyweb.co.za/moneyweb-financial/spotlight-on-private-security-sector-and-its-provi>

News24 – Dolf Scheepers – Impact of the Economic downturn on the security industry in SA – 24 April 2013 – 07:13

Recession, economic downturn, impact of labour unrest on mining and the general economy, high labour force salary expectations, labour union fights for survival, political rivalry with external influences from socialist movements on labour issues and now lately fragflation (high inflation and low economic growth) also influence the private security industry negatively. With more than 8 000 registered security businesses the “cake” is not big enough to give everyone a sizeable opportunity under current conditions.

The reality is a decline in business spending or planning to spend on private security services and stretching payment terms to 60 days plus. Budget adjustments hardly exceed 6% whilst new security contracts are all signed on lower than current rates. The nett effect is an ailing private security industry dropping to net profit margins below 5% at rand values of between R300 and R350 per person per month. It is estimated that on equal time work, companies make more profit out of car guards than a security guard – up to R900 profit could be made from a car guard.

Despite for the above is the security industry growing – more and more new entrants are seen in the industry, new names emerge and “go down” (No nonsense security CC) more second hand bakkies of new companies feature and there are rumours of a growing dissatisfaction amongst security officers due to low rates, non complying security owners pertaining to provident fund contributions and statutory compliance.

Government Gazette 36278 dated 28 March 2013 reflect on more than 200 security services providers withdrawn from rendering security services due to failure to pay annual PSIRA fees. In an April 2013 report it is published that only 480 private security companies out of 9020 registered companies contribute and comply with the regulations of the Private Security Services Provident Fund (PSSPF).

Where does this leave private security companies and business?

A decline in service levels, less innovative security solutions, security officers less cared for, increases in safety risks due to improper uniforms and protective measures with staff vulnerable due to non-statutory compliance in terms of UIF, WCA and other compliant contributions and an industry looking shabby due to low cost uniforms? All of these in efforts to protect net profit margins and enhance shareholder expectations?

The serious security services provider would take on the challenge to compete on price (sic) and would differentiate the low price with additional products and services – over are the days where high prices would be justified with promises of better staff, better uniforms, better training and management. The era is entered (wrongly) where low prices will be protected by the above but business will require that ‘extra’ from the service provider, despite for a low price.

More and more smaller role players will vanish whilst BBBEE and Mining Charter requirements will put more pressure on the larger companies to share wealth in especially mining contracts with local role players putting additional pressure on profit margins being at least 26% less than a year ago.

Whilst survival will force security companies to “go for every new business opportunity” will the responsible business owner still wait and see to it that affordable business contracts are entered into. Mining security might not, if Mining Charter pressure continues to surface, be the lucrative business in the future.

Responsible business owners and users of private security will continue to maintain their values of preferring security services suppliers who care for their employees, value safety of staff and provide that bit extra that would put the user of security at ease of dealing with a responsible security services supplier. The risk of dishonest, unhappy and disgruntled security staff is a threat to business.

Irresponsible security businesses will underpay their staff, reduce costs on uniforms and site equipment and continue to be non-statutory compliant – clever and innovative ideas to overcome high statutory expenses in terms of for example the 4,28% WCA contributions will become more pertinent whilst tax compliance would decrease. Security officer unhappiness and possible irresponsible industrial action could be the order of the day.

Responsible security companies will continue to do business on quality standards, differentiate themselves from the rest of the market and wait for “better days to come” whilst the responsible user of security should appreciate and uses businesses that would be prepared to reduce costs, maintain standards and lower profits.

The future

The future lies in the hands of true, honest and caring leaders with a passion for the industry, service delivery and maintenance of standards who rate quality as the first prize and then profits will follow immediately

<http://www.news24.com/MyNews24/Impact-of-the-Economic-downturn-on-the-security-industry-in-SA-20130424>

News24 – SAPA – Satawu members gather to march – 2013-05-07 – 11:56 **ENCA – SAPA – Satawu prepares for march – 7 May 2013 – 12:54pm**

JOHANNESBURG - Satawu members were trickling into the Peter Roos Park in Johannesburg on Tuesday for a march in demand of higher wages for bus drivers.

Waving union banners, the striking SA Transport Workers' Union members were outnumbered by journalists, police and metro police officers, but said more workers were expected to arrive in the course of the day.

This is how a worker gets noticed.I support this march and hope that workers' lives are taken seriously

Congress of SA Trade Unions Gauteng secretary Dumisani Dakile said the marchers were shop stewards from all the sectors in which Satawu organised.

"We are here to raise issues across our industries, including transport and the private security sector."

Freight company employee Willie Manda, 44, who is a cleaner and a member of Satawu, said he was there to support his union.

"This is how a worker gets noticed. I support this march and hope that workers' lives are taken seriously."

Earlier, Satawu spokesman Vincent Masoga said members would be there in droves "to make employers aware that we mean business" and that they would not back down from their demand for a double-digit wage increase.

Bus drivers have been on strike countrywide for three weeks, demanding a 13% wage increase, down from 18 percent, and allowances for housing, night-shift, and long-distance journeys.

Talks between the unions and employers at the Commission for Conciliation, Mediation, and Arbitration are expected to resume this week.

Masoga said the bus drivers would march to the transport and road freight bargaining council in Braamfontein to hand over a memorandum of their demands.

They would then proceed to the city centre and hand over another memorandum at the offices of the private security sector provident fund.

"The fund has been exploiting workers for years... Workers contribute to the fund, but get almost nothing from the fund, which is supposed to look after their interests," he said.

Johannesburg Metro Police spokesman Chief Superintendent Wayne Minnaar said the marchers would gather at Pieter Roos Park in Parktown at 10am, and disperse at Park Station at 2pm.

Members of the SA Police Service and the Metro Police would direct and monitor the march.

<http://www.enca.com/south-africa/satawu-prepares-march>

<http://www.news24.com/SouthAfrica/News/Satawu-members-gather-to-march-20130507>

MoneyMarketing – Webmaster – Member contributions can't be used to offset employer arrears - June 19, 2013

A member must not be prejudiced in the event his monthly contribution is not paid to the provident fund and is instead used to offset the fund arrears of the employer.

The Deputy Pension Funds Adjudicator Muvhango Lukhaimane has reiterated that the duties of a fund's board shall be to take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with the Pension Funds Act.

Ms Lukhaimane added the fund's board can be held jointly and severally liable for the actions of their mandated agents.

Complainant MI Moloantoa was a member of the Private Security Sector Provident Fund (first respondent) while in the employ of Mjayeli Security Services (Pty) Ltd (third respondent) from 1 September 2011 until the termination of his services on 30 November 2012.

Following the termination of his services, a withdrawal benefit became payable to him. He said the first respondent had failed to pay a withdrawal benefit because of the third respondent's alleged failure to pay all contributions to the first respondent on his behalf.

He was informed by Absa Consultants and Actuaries (second respondent) that he was never registered as a member of the first respondent.

The first respondent submitted that it had the third respondent on its records as a participating employer, having joined as such on 30 April 2007.

The first respondent further submitted that the third respondent was non-compliant with its obligations under the Act and its rules. As a result of the third respondent's non-compliance, provident fund contributions were last received in March 2013 and its record has been updated by the second respondent up to March 2011.

The first respondent submitted that the complainant was not registered as its member as no contributions were received on his behalf. Accordingly, no withdrawal benefit was payable to him.

The third respondent submitted that the complainant was in its employ from September 2011. He became a member of the first respondent with effect from December 2011 until the termination of his services in December 2012.

During this period the complainant paid provident fund contributions in the amount of R2 560.24. The third respondent further submitted that it paid employer contributions on behalf of the complainant totalling the same amount.

Ms Lukhaimane said in her determination the payment of any benefit due to a member of a fund is regulated by the fund's rules. The third respondent was obliged in terms of the Pension Funds Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment is being made.

"Such contributions must be paid directly to the fund in such a manner as to have the fund receive the contributions not later than seven days after the end of that month for which such contributions are payable.

"On 31 May 2013, this Tribunal had a telephonic discussion with the first respondent wherein the latter set out to elaborate on this point.

"It appears that the second respondent's membership data system is set up in such a manner as to prevent the upload of current provident fund contributions for any given month if the employer is in arrears for the preceding months or years, as the case may be.

"To circumvent this, the second respondent uses the current contributions to offset the arrears in order to bring the employer up-to-date, as it were. Hence the submission that contributions from the third respondent were last received in March 2013 but its record has been updated up to March 2011. "

Ms Lukhaimane said owing to the high staff turnover in the private security industry, the foregoing practice was almost always to the prejudice of the new employees.

"The second respondent credits the current contributions towards the individual accounts of those employees in respect of who the employer is in arrears and not necessarily those whose names appear on the contribution schedules.

"As a result, a new employee may not get registered as a member of the fund as there may be no contributions left to allocate after the offset.

“If the employee’s services are terminated before the employer’s record is fully updated, as was the case in this complaint, no benefit will be payable to him.

“This practice flies in the face of the very idea of retirement funding. It is a gross violation of section 13A of the Act and the rules of the first respondent, and must to be strongly discouraged. “

She urged the trustees of the first respondent, in pursuance of their statutory obligations, to prevent what appears to be a case of “expediency trumping the law”.

“The duties of a board shall be to take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;

“Furthermore, members of the board of the fund can be held jointly and severally liable for the actions of their mandated agents.”

Ms Lukhaimane said that barring the period September 2011 to November 2011, she was satisfied that the first respondent was in receipt of the complainant’s provident fund contributions.

She ruled that the complainant must be placed in the position he would have been in had the third respondent regularly paid all the contributions due and the first respondent had paid the benefit it is holding on his behalf.

She also forwarded her determination to the Registrar of Pension Funds to follow up on the second respondent’s manner of allocating contributions as the second respondent carried on business as an administrator of funds, other than the first respondent.

<http://www.moneymarketing.co.za/member-contributions-cant-be-used-to-offset-employer-arrears/>

IRF Daily / Personal Finance. Bruce Cameron. Retirement funds can’t use current payments to offset arrears – 07 July 2013

A retirement fund cannot use current member and employer contributions to make good on arrear contributions, particularly when the money is attributed to members other than those who made the contributions.

This is the basis of yet another determination by deputy Pension Funds Adjudicator, Muvhango Lukhaimane, involving the much-troubled Private Security Sector Provident Fund (PSSPF). Following on from the determination, the Financial Services Board (FSB) has warned it will take action against funds and their administrators who use current contributions indiscriminately to make up for contributions not paid over by employers to retirement funds.

In terms of the Pension Funds Act, all contributions – from both employer and employee – must be paid over to the fund not later than seven days after the end of the month for which they were payable.

An employer must submit a schedule to a fund indicating on behalf of which members it has submitted money, naming the members and the amounts allocated. Lukhaimane warned in her determination that retirement fund trustees could be ordered in their personal capacities to make good to adversely affected members and former members.

Jurgen Boyd, acting FSB deputy executive in charge of retirement funds, says the FSB does not approve of any practice that attempts to allocate a retirement fund member's current contributions towards an employer's arrears contributions that may have accumulated over time and for which the current member may not be responsible.

He says the practice would amount to a contravention of the Pension Funds Act by a fund and its administrator, requiring regulatory action. Boyd says that in terms of the Act the minimum benefit payable to a member of a defined contribution fund, such as the PSSPF, is the member's minimum individual reserve at the date of exit. The Act provides a formula for calculating the amount, which "specifically provides inter alia for the inclusion of all the member's contributions and employer's contributions received by the fund for a member.

"If a fund does not allocate a member's contributions to his or her individual account, it would be acting contrary to the minimum benefit provisions of the Act," Boyd says. He says following Lukhaimane's determination, the FSB has taken the matter up with the PSSPF and the fund's administrator, Absa Consultants and Actuaries, "to determine the nature and extent of any non-compliance. The appropriate regulatory action will follow this engagement."

The determination followed a complaint by an employee of a participating employer in the PSSPF, Mjayeli Security Services. The employee, MI Moloantoa, did not receive his benefit when he left his job. During his employment, from September 1, 2011 to November 30, 2012, Moloantoa and his employer each paid R2 560 in contributions to the fund. Lukhaimane says in her determination that it appears that the fund administrator's membership data system is set up in a manner to prevent the upload of current provident fund contributions for any given month if the employer is in arrears for the preceding months or years.

To circumvent this, Absa uses current contributions to offset the arrears in order to bring the employer up to date. Lukhaimane says that with the high staff turnover in the private security industry, this practice is almost always to the prejudice of the new members, because their contributions are being allocated to older members, many of whom then leave the industry taking with them the contributions of newer members.

As happened in this case, the newer member may not even be registered by the administrator of the fund, and when the member leaves no benefit is then payable. Lukhaimane says: "This practice flies in the face of the very idea of retirement funding. It is a gross violation of the Pension Funds Act and the rules of the fund, and must be strongly discouraged."

She told the PSSPF trustees that they were obliged in terms of the law to prevent what appears to be a case of "expediency trumping the law". She says: "The duties of a board shall be to take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act." Lukhaimane ordered the fund to place Moloantoa in the position he would have been in had his employer regularly paid all the contributions due to the fund and the money been credited to him.

http://www.irf.org.za/live/cms/vault/attachment/142_IRF_DAILY_-_Monday,_08_July_2013.pdf

Personal Finance – Bruce Cameron – The Greedy Feed Well Off Your Billions – 22 September 2013

Billions of rands have been lost to retirement fund members over the past 20 years because of the excesses of an industry that all too often has seen retirement savings as a source of easy profits.

Your retirement savings have been subjected to theft by individuals, employers and even trade unionists, and regulatory structures have too often failed you.

Bruce Cameron, associate editor of Personal Finance, who was speaking at a meeting of the Acsis/Personal Finance Financial Planning Club, says that attacks on your retirement savings seem to be becoming more regular and ever greater in scale as the R1.3-trillion industry (which excludes state pension funds) gathers ever more assets.

However, Cameron says, the main reason most retirement fund members do not retire financially secure is not because of the abuses of the industry, but because they fail to save enough, fail to preserve their savings for retirement, and retire too soon. The abuse and theft of retirement savings adds to the problem.

And he adds that most retirement funds are managed properly. The problem is that when there are attacks on your retirement savings, they tend to be singularly significant and can wipe out your entire nest egg. Cameron warned that unless a stop can be made to the excesses – both legal and illegal – the willingness of individuals to use retirement savings vehicles could be compromised.

He says that the regulators and other gatekeepers, such as retirement fund trustees and service providers, have to improve their vigilance and often their ethics too, to better protect your retirement savings. And members themselves also need to play a role in ensuring those with ill intent are kept at bay.

Cameron says a key issue is that all parties have to accept that the money in retirement funds is not theirs to treat as a feeding trough. This is money that belongs to individuals, who have worked hard to save the money. The billions of rands lost to retirement fund members have been due to:

- Theft and fraud, compounded by a failing justice system, with offenders often either not being prosecuted or getting off lightly. An example is the way in which fraudster Arthur Brown escaped a prison sentence.
- Poorly designed, complex and expensive retirement products, structured on the basis of commissions for product floggers and company profits rather than in the interests of retirement fund members.
- Poor regulation, inept or untrained trustees, and inefficient service providers, particularly retirement fund administrators (see “Protection should come from diverse sources”, below).
- Cameron says a major underlying cause of the losses is the uncontrolled presence of conflicts of interest. These include employers controlling pension funds in their own interests, through to one-stop business structures where one company provides all services to a retirement fund, acting as fund consultants (which should include advising on abuses by service providers) while also providing services such as asset management and risk assurance.

Cameron says that if conflicts of interest were minimised, it would go a long way to stopping abuses. (See “Conflicts of interest at root of disasters”, below).

Conflicts of interest at root of disasters

Conflicts of interest, which underlie almost every retirement fund disaster, must be more strictly controlled, says Personal Finance associate editor Bruce Cameron. He says a conflict of interest in this context is a situation where outside financial interests or obligations (real or perceived) have the potential to bias a decision or cause harm to retirement funds and their members.

“The Financial Services Board (FSB) issued a guidance note (PF130) to retirement fund trustees a number of years ago admonishing the trustees to avoid conflicts of interest.

“Despite this, avoidable conflicts of interest underlie almost every attack on retirement fund savings,” Cameron says.

The guidance note states that trustees “should distinguish between conflicts of interest which may be structural, and therefore unavoidable, and those conflicts which can be avoided or, if this does not compromise the credibility of the governance arrangements, can be managed appropriately”.

Cameron says Fidentia is a major example of what can go wrong. Fidentia bought an umbrella trust fund, which managed the benefits due to widows and orphans of retirement fund members. It renamed the trust the Living Hands Umbrella Trust and appointed new trustees, who were all senior executives of Fidentia.

The trustees took a decision to transfer the management of all assets from Old Mutual to Fidentia Asset Management, whose directors, again, were senior executives of Fidentia. The benefits of the widows and orphans “evaporated” while under the care of Fidentia Asset Management.

A more recent example of conflicts of interest causing a problem is the Rockland Group in Cape Town controlled by an advocate, Wentzel Oaker, who, with others, controlled two companies called Rapicorp 122 & 123, which bought the desolate Schaapkraal sand dunes outside Cape Town for R36 million.

The property was then sold, at R224-million profit, to Rockland Targeted Development Investment Fund (TDIF), managed by Rockland Investment Managers (RIM) which, in turn, was controlled by the Rockland Group.

By December 2010, the property was valued on the TDIF books at R980 million. Rockland Investment Managers received an asset management fee of two percent plus 20 percent of returns above the inflation rate from TDIF – so the higher the value, the more it earned.

Cameron says that retirement funds often pick up problems because they use consultants that are conflicted. He says these consultants fail to do their duty, because they should, in fact, be advising trustees when conflicts are avoidable, as recommended by the FSB’s PF130 advisory note. A good recent example is asset management consultant Riscura.

Cameron says retirement funds, such as the Telkom and Sentinel mining retirement funds, pay Riscura to advise the fund trustees on the judicious management of their assets (the members’ retirement savings). Riscura’s duties include advising the funds on which asset managers to use, which assets to invest in, which service providers to use for things such as ensuring investments are compliant with prudential restrictions, and effecting the movement of assets from one asset manager to another.

But Riscura, either directly or through one of its associated companies, is conflicted because:

- It receives fees for “transitioning” assets between fund managers. So the more often assets are switched between fund managers, the more it earns.

- It receives fees for “risk assessment “from most but not all asset managers to which it has allocated funds. So the more asset managers from which it receives fees it recommends to retirement funds, the more money it will receive.
- It is involved in jointly managing investment portfolios where it shares in the fee. The more money that goes into these portfolios, the more it earns.
- It receives fees from many of the funds it advises for ensuring compliance with prudential investment regulations. In effect, it is often checking on itself.
- As Riscura earns money from these conflicted services, it could potentially tender its consultancy services at a lower rate than competitors that are not conflicted.
- These conflicts have resulted in problems for retirement funds to which Riscura provides consultancy services. The problems include the following:
 - A Riscura/Investec high-interest portfolio held R435 million in bonds in imploding company First Strut, on which Riscura was earning a fee.
 - Riscura holds itself out as an expert in assessing risk – but it could not detect:
 - The 20-year First Strut frauds; and
 - The artificial property valuations and conflicts of interest in the Rockland saga, in which it advised retirement funds to invest.

Cameron says the question when it comes to companies such as Riscura, is: “Who guards the guards? The primary duty of a consultant is to guard.

“Also, the trustees of Telkom and Sentinel retirement funds and other Riscura-advised retirement funds cannot argue that resulting losses for individual members are ‘fractional’.

“Retirement fund members have a fiduciary duty to manage your retirement saving properly, and this includes avoiding conflicts of interest wherever possible.

“It is not that conflicts of interest mean that things will go wrong. Conflicts of interest raise the potential for things to go wrong and should therefore be avoided at all times,” Cameron says.

Protection should come from diverse sources

A significant problem in controlling the excesses of the financial services industry in managing the country’s retirement savings is the often poor regulatory oversight by both the regulators and other gatekeepers.

This is exacerbated when conflicts of interest that can be avoided are not avoided and when retirement funds use one-stop-shop structures, where a single service provider provides all or most services.

This, in turn, is compounded by retirement fund trustees who are not properly trained or badly trained by service providers, misled by service providers, or, in effect, bribed by service providers in numerous ways – from free trips abroad to gifts of iPads.

Personal Finance associate editor Bruce Cameron says the Financial Services Board (FSB) misses too many problems in the financial services sector. He says in many instances the FSB was warned of problems but failed to take timely action.

A major example was Fidentia, where the FSB was provided with proof by Personal Finance at least 18 months before the R1.6-billion collapse that all was not well at the company. The FSB should also have picked up and taken earlier action on others, including Fedsure, Ovation, Dynamic Wealth,

Corporate Money Managers and the more recent Relative Value Arbitrage Fund – a Ponzi scheme posing as a hedge fund in which 3 000 investors stand to lose R2 billion.

But there are other gatekeepers, beyond fund trustees and the regulators, who have a statutory and/or fiduciary duty to protect your retirement savings. Auditors are supposed to play a major role, but time after time fail dismally to pick up even blatant fraud. Lawyers often assist with scams rather than taking action to prevent them.

Property valuers do the bidding of their paymasters in providing fanciful valuations. Banks should properly check out bond issues, such as the First Strut issue of corporate bonds, which was based on fraudulent information. Company directors, particularly independent directors, are supposed to act in the best interests of the company and, therefore, its shareholders. Credit rating agencies should properly assess risks, yet fail to pick up the biggest risk: fraud. And retirement fund consultants are supposed to assist in protecting retirement funds from the avaricious, but fail to do so because of their own avoidable conflicts of interest.

Litany of attacks on retirement savings

Personal Finance associate editor Bruce Cameron says that over the years the attacks on retirement fund savings have come from many different quarters. These include:

Fedsure

In 2001, financial services company Fedsure imploded, costing retirement fund members hundreds of millions of rands. The main reason was that senior executives were using retirement fund savings to build a financial empire, which collapsed when one of its main investments, Saambou Bank, failed. However, there were other problems, including maladministration and the offering of investment guarantees that, to attract investors, were above market value.

The result was that members of building industry retirement funds lost 12 percent of their savings (R600 million), pensioners with guaranteed pensions received lower increases, and returns on smoothed bonus policies were reduced.

Secret profits

Alexander Forbes and other retirement fund administrators created structures that enabled them to skim off more than R500 million in secret profits. Most were made from bulking retirement fund bank accounts to earn extra interest.

Fidentia

Fidentia collapsed after the fraudulent use of R1.6 billion that belonged mainly to beneficiaries of deceased members of the National Union of Mineworkers Provident Fund. Most of the beneficiaries have been left destitute.

Glenrand MIB

In 2009, this company, which has now become part of the Aon group, liquidated its retirement administration arm rather than fix the mess it had created in administering 20 retirement funds with 80 000 members. This meant that the funds had to pay twice for the same job. At the time, a former chief executive of the Financial Services Board (FSB) was on the Glenrand board.

Rockland TDIF

In 2007, an area of 480 hectares of undeveloped, windswept sand dunes in Schaapkraal, facing False Bay, was bought for R36 million through structures created by advocate Wentzel Oaker. The properties were then sold to Rockland Targeted Development Investment Fund (TDIF), a vehicle

controlled by Oaker, for R260 million. Six retirement funds had invested R519 million in TDIF by the time it was placed under curatorship by the FSB. Investors were led to believe that the land, which didn't have the correct zoning rights, would be transformed into a mini-city.

Dynam-ique/Aon

In 2011, the South African arm of Aon, the world's biggest retirement fund administration company, was suspended for seven months from taking on new business. The reason was that umbrella funds it was administering, including four it had taken over from another administrator, Dynam-ique, were in an administrative mess.

The 11 000 members of the four Dynam-ique funds could lose 2.5 percent (R20 million) – the cost of rebuilding the records of the funds – of their savings. However, the Pension Funds Adjudicator has ruled that former trustees of the umbrella funds must meet the cost. The determination is set to be appealed. The problems in the Dynam-ique funds have still not been resolved.

Trilinear/Canyon Springs

Five retirement funds associated with the Southern African Clothing and Textile Workers' Union (Sactwu) stand to lose about R470 million as a result of major investment scams, leaving the funds unable to meet their commitments to their 25 000 or so members, who are among the lowest-paid industrial workers in the country.

The potential loss of R470 million is a result of the channelling of retirement fund assets through the Trilinear Empowerment Trust and then into failed investments, such as Canyon Springs and Pinnacle Point. Extraordinarily high fees were deducted as the money was directed through the various channels.

Associated with this failure is troubled asset manager Interneuron, which was placed under curatorship after it lost money investing in Trilinear and lost R500 million in rogue derivative trading. There is a potential loss of R102 million for the Paper Printing Wood and Allied Workers Union (Ppwawu) National Provident Fund, which invested in Trilinear via Interneuron.

First Strut

The recent collapse of the country's biggest unlisted company, First Strut, could see the loss of hundreds of millions of rands, mainly in bank loans. However, there is also more than R800 million in retirement savings that were invested in First Strut corporate bonds by asset managers including Investec (R435 million), Sanlam (R236 million), Prudential (R51 million), Stanlib (amount unknown), Momentum (amount unknown) and Fairtree Capital (R131 million).

Unregistered products

Cameron says that, despite much legislation and a regulator with increased powers, products that should be registered and regulated still seem to elude the regulators. These include:

- **Ovation.** This asset manager imploded in the wake of losses of R200 million after investing in an unregistered money market fund, Common Cents. The money was stolen by Ovation owner Angus Cruickshank. No adviser checked whether Common Cents was registered as a collective investment scheme.
- **Dynamic Wealth.** The company, now shut down, operated a specialist income fund that posed as an investment club to avoid the limitations that the Collective Investment Schemes Control Act would have imposed on it. It invested R230 million in an unregistered money market fund managed by Corporate Money Managers (CMM). Instead of investing in money market

instruments, CMM invested in property developments that failed, with potential losses of R1.1 billion.

- **Construction industry** Cameron says retirement fund members will, in effect, be the ones picking up much of the R1.46 billion in fines imposed by the Competition Tribunal on 15 construction companies, including the country's five largest companies, which were found to be colluding on prices, particularly during the construction phase of the soccer World Cup. The reason is that retirement funds are major shareholders in these companies. More losses could follow, with anticipated civil action against the companies.

Employer attacks

- **Non-payment of contributions.** The non-payment of contributions collected from employees and due by employers to umbrella retirement funds is a growing problem. This has been exacerbated by the failure of the justice system to prosecute offenders and by the fact that offending employers often liquidate their companies. Participating employers (security companies) in the Private Security Sector Provident Fund, an umbrella fund, have been the worst offenders.

Non-payment of contributions has an almost immediate impact on members, because the fund is primarily a provider of life and disability assurance to members, who are in a high-risk job as security guards. The non-payment of contributions by employers means the non-payment of premiums and the ensuing loss of assurance cover, leaving members and their dependants financially vulnerable in case of injury or death.

Changes to the law are being considered that will make employers and company directors personally both criminally and civilly liable for any non-payment of contributions.

- **Surplus stripping.** Currently under way is the criminal trial of Simon Nash, chief executive of industrial company Cadac, one of a number of employers that stripped surpluses from retirement funds in the 1990s, with the complicity of companies in the financial services industry.
- **Trade unions** Trade unions have found many ways to attack the retirement fund savings of their members, mainly by exerting excessive control over fund trustees, whom they often simply hire and fire to ensure that their bidding is done.

Things that have gone wrong:

- The SA Commercial, Catering and Allied Workers Union (Saccawu) National Provident Fund was placed under curatorship in 2002 after estimated losses of R1.7 billion for 90 000 Saccawu members.
- Commissions were paid by life assurance companies to unions for retirement fund risk assurance business.
- In 2007, the Ppwawu National Provident Fund trustees had to get High Court protection from the Chemical Energy Paper Printing Wood and Allied Workers Union, which tried to make them subject to decisions by the union management.
- Trade unions set up retirement fund service provider companies to provide services to their associated retirement funds, with the trustees being instructed to give mandates to these companies, which, in turn, mainly outsource the work, adding to costs.

Poor products

A mainly hidden cost for retirement fund members lies in poor products that are not suitable for their needs. Most of these are individual retail products, such as retirement annuity (RA) and preservation funds, rather than occupational retirement funds, with the exception of many umbrella funds, which are poorly structured.

Cameron says it is difficult to assess the total amount involved, but it would probably be many billions of rands. The causes are multiple and include:

- High costs, particularly of individual life assurance retirement products. Research undertaken by an independent actuary, Rob Rusconi, in 2004 showed that life assurance retirement annuities were the most costly of retirement products – judged not only on South African benchmarks, but also internationally. The costs are often opaque and difficult to assess.
- Confiscatory penalties, levied by life assurance companies when you cannot afford to maintain contributions to an RA fund. In 2005, the Finance Minister at the time, Trevor Manuel, imposed, in effect, a R3-billion fine on the assurance industry and placed limits on the penalties. However, penalties still apply and amount to losses for members. Penalties do not apply to non-life assurance RAs.
- Double-charging for asset management. Performance fees on top of annual asset management fees are becoming increasingly common. An annual asset management fee is already a performance fee, because the fee is a percentage of assets, and the better the returns, the more money the manager earns.

Mis-sold (but not necessarily bad) products

Cameron says there are a number of financial products that are sound but they are sold to the wrong people. The worst example has been the mis-selling of investment linked living annuities (illas), particularly immediately after their introduction in the 1990s. Most product providers and financial advisers failed to consider the risks of illa pensioners drawing down too large a percentage of their capital while attempting (mainly unsuccessfully) to counteract this with high risk investment strategies. While the situation has improved in recent years, many pensioners have been condemned to eventual destitution at the very time when they are hardly likely to find alternative income.

And a few more ...

Cameron says desperate pensioners, who have not saved enough for retirement, have been caught up in various scams and high-risk schemes trying to get a better return. These have included:

- Masterbond, the original biggie in 1984, in which 22 000 investors, many of whom were pensioners, lost a significant part of the R600 million they invested. At least 16 pensioners who were left destitute committed suicide.
- The Leaderguard forex scam, run from Mauritius, in which investors recovered only about R27 million of the R300 million lost.
- Property syndications. Cameron says this is probably one of the biggest tragedies, but because the losses come from various companies, the full extent will probably never be known. The authorities, which failed to take action to stop the disaster, seem loath to launch a comprehensive investigation. There has already been one known suicide of a pensioner who was left destitute.

Personal Finance – Laura du Preez – Pensions adjudicator clears case backlog – October 13 2013 – 12:25pm

The backlog of complaints in the office of the Pension Funds Adjudicator (PFA) has been cleared, and it now takes seven months, on average, to resolve a case, the adjudicator's annual report says.

A total of 8 127 complaints were dealt with in the 12 months to the end of March – an increase of 65 percent on the number dealt with in the previous year and substantially more than the 5 161 that the office received over the year to March 31, PFA Muvhango Lukhaimane says.

In addition, a number of cases that should have been closed, but were still on the office's books, have been dealt with, she says.

The backlog, which can be traced back to 2007, has had a negative effect on the view that her office provides a procedurally fair and low-cost complaint-resolution process, Lukhaimane says.

On April 1 last year, the adjudicator's office had 8 330 cases open; by March 31 this year, 2 710 cases were still open.

During the 12 months under review, 4 127 determinations were handed down, and in 2 399 cases, relief was granted to the complainant. Some 23 appeals were lodged against the determinations.

Although fund members are required by the Pension Funds Act to lodge written complaints with their fund before they approach the PFA, the adjudicator says her office was unable to enforce this provision, largely because most funds that were subject to complaints did not have their records in order, particularly with regard to information about membership and contributions.

Abel Sithole, chairman of the Financial Services Board, says it is disturbing that, in April last year, 60 percent of the complaints to the PFA were against the Private Security Sector Provident Fund (PSSPF). The complaints concerned employers who were in arrears with contributions, the failure to pay, or the late payment of, withdrawal benefits and death benefits, and the absence of benefit statements.

The number of complaints against the PSSPF had dropped to a third by March 31 this year, he says.

Lukhaimane says that employers are not taking enough interest in how occupational retirement funds are managed, despite the fact that fund membership is part of their employees' remuneration packages.

<http://www.iol.co.za/business/personal-finance/retirement/pensions-adjudicator-clears-case-backlog-1.1590918#.U3CuEWekCt9>

Beeld – Andri van Zyl – Meeste klagtes oor annuïteite – 13 Oktober 2013

Johannesburg. – Die kantoor van die beregter van pensioenfondse het in die boekjaar tot einde Maart 65% meer klagtes hanteer as in die vorige jaar.

Dit is te danke aan die hersiening van die proses waarvolgens klagtes hanteer is, sê Abel Sithole, voorsitter van die Raad op Finansiële Dienste (RFD) in die jongste jaarverslag van die kantoor.

Van die 8 127 klagtes wat afgehandel is, het die beregter 4 127 beslissings uitgereik, waarvan die meeste (2 399) in die guns van die klaers was.

Muvhango Lukhaimane, wat onlangs aangewys is as beregter, sê die getal klagtes wat in die guns van klaers beslis is, dui op gebrekkige kommunikasie tussen trustees en administrateurs met hul lede.

Die kantoor van die beregter is steeds bekommerd oor die groot aantal klagtes wat ontvang word oor die voordele wat uitbetaal word as uittree-annuïteite opbetaald gemaak word of in ander polisse omgeskakel word.

In die boekjaar onder oorsig het klagtes hieroor 61% van die 5 161 nuwe klagtes wat die kantoor ontvang het, verteenwoordig.

Lukhaimane sê dit is ook 'n aanduiding van swak kommunikasie tussen die langtermynversekeraars en polishouers.

Die doeltreffendheid van die kantoor word gekniehalter deur probleme met pensioenfondse wat nie hul boeke op datum hou nie en die groot aantal klagtes wat ontvang word oor die Private Security Sector Provident Fund (PSSPF).

Lukhaimane sê klagtes teen die PSSPF verteenwoordig bykans 'n derde van al die klagtes wat ontvang word, al is nuwe trustees en administrateurs vir die fonds al in 2009 deur die RFD aangestel.

Sy sê voorts dat swak boekhouding van lidmaatskap en bydraes van lede by die meeste fondse waarvoor klagtes ontvang word, dit vir die kantoor onmoontlik maak om binne die bepalings van die wet sy werk te doen.

Die wet bepaal onder meer dat 'n klaer eers 'n klagte moet indien by die betrokke fonds voordat hy hom na die kantoor van die beregter wend.

Sy sê dit is vir die kantoor nutteloos om eers 'n klag na die betrokke fonds te verwys as die kantoor reeds weet dat hy geen antwoord gaan kry nie omdat die boekhouding nie in orde is nie.

Vir die kantoor is dit ook nie aanvaarbaar dat hy beslissings uitvaardig teen fondse wat ná verskeie versoeke nie reageer op 'n betrokke klagte teen hom nie, maar dikwels kan dit nie verhelp word nie.

<http://www.beeld.com/sake/2013-10-13-meeste-klagtes-oor-annuteite>

Moonstone – Paul Kruger – Positive News From PFA – 14 Oct 2013

The Pension Fund Adjudicator published her annual report last week. It contains some very positive indicators, as well as concerns for the industry, and the public.

In the message from the Minister of Finance, Pravin Gordhan, quotes the following statistics which point at major improvements in the handling of complaints:

The Office of the Pension Fund Adjudicator (OPFA) came into being on 1 January 1998 to dispose of complaints lodged under the Pension Funds Act, 24 of 1956 in a procedurally fair, economical and expeditious manner. While the organisation has established itself as a critical component of the financial services industry, it has nonetheless experienced several challenges, chief amongst which has been the backlog of complaints, which can be traced as far back as 2007.

I am pleased to note, however, that such backlogs have been addressed and significant progress made. Indeed, the OPFA has succeeded through the implementation of a new case management system in clearing the backlog of complaints received as far back as 2007. The resolution of complaints continues to see a marked improvement. In comparison to the 2011-2012 financial year, the New Complaints Unit resolved 22% more complaints while the Conciliation Unit and the Adjudication Unit finalised 52% and 93% more complaints respectively. A total of 8127 complaints

have been dealt with in the current financial year, representing a 65% increase from the previous year.

Abel Sithole, Chairman of the Financial Services Board, points out that the new case management system addressed an inherent problem in the OPFA:

The overhauling of the complaints management system contributed in no small measure to the reduction of time-lines but also ensured that line managers assessed correspondence at the earliest possible time by eliminating the churning of complaints between the three departments, viz. the New Complaints Unit, Conciliation and Adjudication.

Another concern pointed out by Mr Sithole was ...the lack of co-operation and trust between pension fund members and beneficiaries on the one hand, and administrators, pension funds and boards of trustees on the other hand. In the reporting period, 4 127 determinations were handed down, of which, in 2 399 cases, relief was granted to the complainant. This clearly points to the need for fund trustees and administrators to work harder at communicating and educating members and beneficiaries about fund rules and benefits.

Both Gordhan and Sithole expressed concern about the predominance of complaints about the Private Security Sector Provident Fund (PSSPF). These included arrear contributions, none or late payment of withdrawal benefits, the payment of death benefits and provision of benefit statements in. These made up almost 60% of the total complaints received. Whilst the number of complaints against the PSSPF decreased to a third by 31 March 2013, the report points out that this situation is untenable as the PSSPF's non-compliance with various aspects of the Pension Funds Act is ...overly engaging the OPFA, much to the prejudice of the pension funds industry as a whole, its members who pay levies and beneficiaries.

It appears that most of the credit for the turnaround must go to Ms Muvhango Lukhaimane, the recently promoted Pension Funds Adjudicator. In her report, she also noted some challenges:

The OPFA was unable to enforce section 30A of the Act, requiring that a complainant should first attempt to lodge a written complaint with the fund and give the fund 30 days to respond in writing. This was largely due to the fact that most funds that were subject to complaints did not have their records in order, more especially with regard to membership and contribution details. This situation continues to prevail and hampers the ability of the OPFA to discharge its mandate. It, therefore, becomes difficult to insist that complainants who are lodging complaints against a particular fund, where the OPFA is already aware of an existing record-keeping and compliance problem, to first approach the fund for a written response as this would not be given.

It is also not ideal for the OPFA to be issuing default determinations; ie orders against respondents who do not bother to lodge a response to a complaint despite numerous requests to do so. It is a statutory requirement that parties need to respond when requested to do so by the OPFA and, therefore, non-compliance is a contravention of the Act. However, we cannot grant parties, especially funds, employers and administrators, countless opportunities to respond as this defeats the purpose of having a tribunal of this nature.

A further issue that needs to be addressed, appears to be that orders by the OPFA are not always complied with. This renders such an order ineffective, and Ms Lukhaimane expressed the need for this to be addressed.

In his contribution, Mr Gordhan referred to his 2013 Budget Speech in which he announced a number of retirement reforms which seek to improve the functioning of the retirement system and to promote long-term household saving.

Included in these reforms is improved and strengthened governance over retirement funds. The shift towards a “twin peaks” system for financial regulation is a further attempt to enhance the regulatory framework and improve the financial services sector. The Office of the Pension Funds Adjudicator (OPFA) plays a critical role in the establishment of a model which will ensure that our financial system continues to feature amongst the best regulated and supervised in the world, with an enhanced focus on market conduct and consumer protection.

One element which is critical in achieving this will be to act decisively against repeat offenders. If you do address the root cause of complaints you will forever be chasing your own tail.

<http://www.moonstone.co.za/positive-news-from-pfa/#sthash.I3eqXPxf.dpuf>

IOL – Lyse Comins – Row over R7.5m ICC tender – January 13 2014 – 02:32pm

Durban - A R7.5 million contract to guard Durban’s International Convention Centre has ignited a battle between security companies, and a police investigation into the firm that won the tender. Some local security firms are up in arms over the award to a company that is facing a police probe into a claim of fraud for allegedly not paying all of its staff’s mandatory provident fund contributions. The eThekweni Municipality and the company against which the allegation has been levelled, Isidingo Security Services, have not responded to Daily News questions over these allegations.

However, ICC CEO, Julie-May Ellingson, said she was not aware of the fraud allegation, saying the company had provided all the legal documents to prove that it was compliant with legislation. The Private Security Industry Regulatory Authority said it had lodged the fraud allegation against the company. SAPS spokesman, Captain Thulani Zwane, confirmed this. The SA Security Association (Sasa) said it had called for an investigation into the tender award and had withdrawn Isidingo’s gold membership, granted to companies that met all of the sector’s stringent legal requirements, including compliance with the Private Security Sector Provident Fund.

Sasa’s KZN chairman, Gary Tintinger, said the association had, on November 25, lodged an objection with the eThekweni Municipality to the tender award. This was after tendering firms received regret letters stating the winner. “Sasa objected on behalf of its gold members who felt the tender should not have been awarded to Isidingo Security as they were seriously in default in respect of contributions to the statutory Private Security Sector Provident Fund – making them non-compliant with legislation,” Tintinger said. “Sasa’s view is that the city needs to investigate and visit the companies that tendered for the contract and go through an audit of compliancy with PSIRA, Provident Fund, Sars, UIF and the Department of Labour,” Tintinger said.

Tintinger said the city had replied, advising that the tender would not be awarded until a full investigation had been conducted. He said the tender process required all bidding companies to produce a certificate of compliance from the provident fund. He said Isidingo had obtained a temporary compliance certificate from the fund, which was valid for only 30 days. Once it expired, it would not be re-issued unless all the outstanding contributions were paid up. “Isidingo might have got a letter of compliancy based on an agreement to pay, but they are non-compliant with paying provident fund by the stipulated date, which by law is the 7th of each month,” Tintinger said.

“Isidingo have made arrangements to pay the arrears over a period of time. They are compliant with this arrangement. But they have not paid the debt of about R11 million in full. “We did query the issuing of the compliance certificate with the PSSPF and have been advised by the chairman of the fund that they will, in future, not be issuing a letter of good standing to any company which is in any way in arrears,” Tintinger said. “Sasa’s stance is that no company will be awarded gold status if their provident fund contributions are not up to date. Making ‘payment arrangement’ with the Provident Fund or Sars, WCA (Workmen’s Compensation Assistance) and UIF does not constitute compliance,” Tintinger said.

Private Security Sector Provident Fund chairman, Cobus Bodenstein, confirmed that Isidingo had signed an agreement to pay off R11 million in arrears pension contributions. He said the company had been issued with a temporary compliance certificate that was valid for a month from December 3. “They paid off close to R1 million in December and the outstanding amount now stands at R10 million,” Bodenstein said. Private Security Industry Regulatory Authority spokeswoman, Siziwe Zuma, said it had laid a charge of fraud against Unitrade 1047 CC trading as Isidingo Security Services “for deducting provident fund contributions and failing to pay over to the administrators of the fund” in contravention of Sectoral Determination 6 under the Basic Conditions of Employment Act of 1997, that provides for compulsory membership and contributions to the fund.

“The criminal investigation in this matter must still take its course and at this stage, the authority cannot confirm whether the business will be formally charged by the National Prosecuting Authority as the investigation must be concluded by the South African Police Service,” Zuma said. Ellingson said Isidingo had provided, among other documents, a PSIRA Certificate and a Security Industry Alliance Certification with its tender confirming that it was a Gold Class Member (Expiry Date: June 30, 2014) and compliant with all legislation, including the provident fund. “When evaluating tender documents, the Durban ICC utilises all documents and certificates issued with the tender to confirm compliance, thus we rely heavily on authorising bodies within the various industries to highlight non-compliance/compliance through certifications and letters of good standing,” Ellingson said.

“All letters of compliance and good standing were provided and clearly indicated that this company was compliant. “Until such time that we receive official notification from the respective authorities that they have retracted their certifications and/or letters of good standing, we cannot be prejudiced against this tenderer,” Ellingson said. Ellingson said she was unaware of the fraud claim but was aware of a letter Sasa had sent to the municipality advising it was in the process of withdrawing Isidingo’s gold membership status due to non-compliance with the provident fund. She said the ICC had then contacted Isidingo and asked for a letter of compliance from the provident fund, which it had submitted on December 5.

“The Private Security Sector Fund Compliance Certificate is dated 3 December 2013. This letter states that Isidingo is ‘in line with the Sectorial determination and in compliance with requirements of the fund’.” However, Ellingson said the ICC was not aware whether a letter of award for the contract had yet been issued to Isidingo. “The eThekweni Municipality distributed letters of regret to those companies who were not considered the successful tenderer. The letters, dated 18 November, 2013, stated that Isidingo Security Services was found to be the successful tenderer,” Ellingson said. “Regarding the steps the city will take in moving forward, the Durban ICC is currently awaiting direction and a decision from the city,” Ellingson said.

“From the ICC’s perspective, we believe any allegations must be dealt with through the formal appeals process to ensure transparency and fairness to all parties prior to any award being made by the eThekweni Municipality,” Ellingson said. Some security companies which spoke to the Daily News on condition of anonymity said they were unhappy with the award to Isidingo, and had lodged

official objections with the municipality, but had not received a response. Tintinger said the practice of hiring non-compliant security companies was rife in the market.

“There are many large corporate consumers utilising non-compliant security providers simply because they are cheaper. Until such time that someone does something about this, you are always going to get non-compliant companies undercutting the prices of compliant companies and being awarded lucrative contracts to the detriment of the security officers who lose out on legislated benefits,” Tintinger said.

<http://www.iol.co.za/news/crime-courts/row-over-r7-5m-icc-tender-1.1631057#.U3sBOWeKt8>

Drum – Sthembile Gasa / Khosi Biyela – DA demands probe of multimillion rand security tender – January 14, 2014

The Democratic Alliance (DA) has called on the African National Congress-led eThekweni municipality in KwaZulu-Natal to “urgently” investigate the awarding of a multimillion rand security tender. Ethekeeni DA Caucus leader, Zwakele Mncwango has written to the municipal manager, Sibusiso Sithole asking him to investigate why Isidingo Security Services was awarded the R7.5-million tender while police were still investigating the company.

Mncwango claims police are investigating Isidingo for pension fraud.

Isidingo could not be reached for comment.

Isidingo provides security services to Inkosi Albert Luthuli Convention Centre (ICC) in Durban.

It has been reported that Isidingo owes the private Security Sector Provident Fund (PSSPF) R10-million in outstanding staff contributions. This has resulted in the withdrawal of their gold membership status with the SA Security Association.

Gold membership status is given to companies who comply with the security sector’s stringent strict legal obligations.

One of those includes meeting the PSSPF’s requirements which Isidingo has reportedly failed to do.

“Isidingo clearly has a murky past and had demonstrated a history of flouting the law. It is simply unacceptable that they can then be entrusted with providing security for a venue as prestigious as the ICC that hosts world-class events throughout the year,” said Mncwango in a media statement.

The company has been involved in a number of controversies.

Three years ago two of its security guards were arrested when found to be transporting 54 guns without permits.

In addition, 109 guns seized from the company were classified as illegal by the Private Security Industry Regulatory Authority.

In 2008 media reports revealed that the company had flouted employment legislation following a probe by the labour department who further revealed that the company had failed to pay its workers the R409 000 it owed them.

Mncwango insists that: "Sithole must investigate this matter urgently and ensure that only a reputable company that meets all industry and legal requirements is given this contract."

Ethekwini Municipality and Isidingo could not be reached for comment.

But ICC CEO, Julie-May Ellingson, told the Daily News newspaper that she was not aware of the fraud allegation, saying the company had provided all the legal documents to prove that it was compliant with legislation.

<http://drum.co.za/news/da-demands-probe-of-controversial-tender-to-security-company/>

ITI News – Noluthando Lamula – PFA ruling should urge employees to confirm they are in fact registered with a provident fund – 13 Mar 2014

Responsibility of the board of the first respondent to report non-compliance with the sectoral deter

The illegal practice of employers failing to register with a provident fund whilst deducting employees' contributions which are not paid over has again come under scrutiny in a recent determination by the Pension Funds Adjudicator Ms Muvhango Lukhaimane.

The ruling should also urge employees to ensure they are registered with a provident fund even though they may be paying provident fund contributions.

A provident fund was also rapped on the knuckles by Ms Lukhaimane for failing to compel a company to register as a participating employer.

ATD Security CC, trading as W R S Security Services (second respondent), deducted R187.50 monthly from the salary of JO Selebogo as a provident fund contribution.

However, Mr Selebogo who had commenced employment on 1 November 2007 complained to the Office of the Pension Funds Adjudicator (OPFA) that he had never received a benefit statement from the Private Security Sector Provident Fund (first respondent) confirming his membership and the amount of his fund credit.

As a result, he did not know whether or not the money that had been deducted from his salary was remitted to the first respondent on his behalf.

The first respondent submitted to the OPFA that according to its records, the second respondent was not registered as its participating employer and, therefore, it had no record of the complainant.

It further submitted that the second respondent had not applied for nor been granted an exemption from participating in the first respondent.

The first respondent added that since the complainant was not its member, no benefit payment was due to him. It requested that the complaint against it be dismissed.

Although the second respondent was granted an opportunity to comment on the allegations made against it, no response was received.

In her determination, Ms Lukhaimane said in terms of the first respondent's rules, "all employers in the private security sector shall participate in the fund". The first respondent's rules also stipulated that "each eligible employee shall, as a condition of employment, become a member of the fund".

"The complainant has provided this Tribunal with a copy of his payslip, which indicates that the second respondent indeed deducted provident fund contributions from his monthly salary.

"It is, however, apparent that the second respondent failed to register itself as a participating employer of the first respondent and the complainant as the member of the first respondent in violation of Rules 3.1 and 3.2 of the first respondent's rules.

"The second respondent ought to have registered as a participating employer in the first respondent on 1 September 2002, as this is the commencement date of the first respondent.

"The complainant commenced employment with the second respondent on 1 November 2007. The second respondent ought to have registered the complainant as a member of the first respondent from May 2008 following the expiry of his six months of continuous employment in the private security sector.

"However, the second respondent failed to register the complainant from May 2008. Therefore, the first respondent's failure is in contravention of Rule 3 of the rules of the first respondent."

Ms Lukhaimane said the second respondent had a duty placed on it by the provisions of section 13A(1)(a) of the Pension Funds Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment is being made, and the first respondent in turn has a duty to pay out benefits to the members.

She also said the first respondent was a fund established in terms of the Sectoral Determination 6: Private Security Sector, South Africa.

"It is clear that it is compulsory for all employers in the private security sector to participate in the first respondent as prescribed in the sectoral determination.

"It is also compulsory for all employees in the private security sector to join membership of the first respondent.

"The first respondent is required to take all reasonable steps to ensure compliance with the sectoral determination by compelling all employers in the private security industry to participate in it and also to register their employees as its members.

"The first respondent is also required to ensure compliance with section 13A(1)(a) of the Pension Funds Act by compelling defaulting employers to pay outstanding contributions in respect of their employees.

"In the present case, the first respondent was equally required to compel the second respondent to register as a participating employer and also register its employees.

"It is the responsibility of the board of the first respondent to report non-compliance with the sectoral determination to the Registrar of Pension Funds whose mandate is to enforce compliance with the Act.

“However, the first respondent failed to comply with its responsibilities and as a result, the second respondent is not registered as a participating employer and also the complainant is not registered as a member,” said Ms Lukhaimane.

She was also scathing of the Private Security Industry Regulatory Authority (PSIRA) which in terms of the Private Security Industry Regulatory Act was required to ensure employers in the private security sector complied with the sectoral determination.

“It is also the responsibility of PSIRA to take legal action and/or report non-compliance with the sectoral determination regarding the employers’ participation in the first respondent and also registering their employees as members of the first respondent. However, PSIRA has also failed to comply with its responsibilities,” Ms Lukhaimane said.

Ms Lukhaimane requested that the first respondent and PSIRA forward the second respondent’s non-compliance with the sectoral determination and the rules of the first respondent to the Registrar of Pension Funds

She ordered the second respondent to register with the first respondent as its participating employer from 1 September 2002 and to register the complainant as a member of the first respondent from May 2008 to date.

The second respondent was also ordered to submit all outstanding contribution schedules from May 2008 to date to the first respondent in order to facilitate the computation of the complainant’s arrear contributions.

The first respondent was also ordered to pay to the first respondent arrear contributions together with late payment interest.

The first respondent was ordered to provide the complainant with a copy of his latest benefit statement, within two weeks of receiving payment from the second respondent.

<http://www.itinews.co.za/companyview.aspx?cocategoryid=5&companyid=61&itemid=E682C19D-5058-43F7-836B-D58AF7B426ED>

FA News – PFA ruling should urge employees to confirm they are in fact registered with a provident fund – 13 March 2014

The illegal practice of employers failing to register with a provident fund whilst deducting employees’ contributions which are not paid over has again come under scrutiny in a recent determination by the Pension Funds Adjudicator Ms Muvhango Lukhaimane.

The ruling should also urge employees to ensure they are registered with a provident fund even though they may be paying provident fund contributions.

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ATD Security CC, trading as W R S Security Services (second respondent), deducted R187 .50 monthly from the salary of JO Selebogo as a provident fund contribution.

However, Mr Selebogo who had commenced employment on 1 November 2007 complained to the Office of the Pension Funds Adjudicator (OPFA) that he had never received a benefit statement from the Private Security Sector Provident Fund (first respondent) confirming his membership and the amount of his fund credit. As a result, he did not know whether or not the money that had been deducted from his salary was remitted to the first respondent on his behalf.

The first respondent submitted to the OPFA that according to its records, the second respondent was not registered as its participating employer and, therefore, it had no record of the complainant. It further submitted that the second respondent had not applied for nor been granted an exemption from participating in the first respondent.

The first respondent added that since the complainant was not its member, no benefit payment was due to him. It requested that the complaint against it be dismissed.

Although the second respondent was granted an opportunity to comment on the allegations made against it, no response was received.

In her determination, Ms Lukhaimane said in terms of the first respondent's rules, "all employers in the private security sector shall participate in the fund". The first respondent's rules also stipulated that "each eligible employee shall, as a condition of employment, become a member of the fund".

"The complainant has provided this Tribunal with a copy of his payslip, which indicates that the second respondent indeed deducted provident fund contributions from his monthly salary.

"It is, however, apparent that the second respondent failed to register itself as a participating employer of the first respondent and the complainant as the member of the first respondent in violation of Rules 3.1 and 3.2 of the first respondent's rules.

"The second respondent ought to have registered as a participating employer in the first respondent on 1 September 2002, as this is the commencement date of the first respondent.

"The complainant commenced employment with the second respondent on 1 November 2007. The second respondent ought to have registered the complainant as a member of the first respondent from May 2008 following the expiry of his six months of continuous employment in the private security sector.

"However, the second respondent failed to register the complainant from May 2008. Therefore, the first respondent's failure is in contravention of Rule 3 of the rules of the first respondent."

Ms Lukhaimane said the second respondent had a duty placed on it by the provisions of section 13A(1)(a) of the Pension Funds Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment is being made, and the first respondent in turn has a duty to pay out benefits to the members.

She also said the first respondent was a fund established in terms of the Sectoral Determination 6: Private Security Sector, South Africa.

"It is clear that it is compulsory for all employers in the private security sector to participate in the first respondent as prescribed in the sectoral determination.

"It is also compulsory for all employees in the private security sector to join membership of the first respondent.

"The first respondent is required to take all reasonable steps to ensure compliance with the sectoral determination by compelling all employers in the private security industry to participate in it and also to register their employees as its members.

"The first respondent is also required to ensure compliance with section 13A(1)(a) of the Pension Funds Act by compelling defaulting employers to pay outstanding contributions in respect of their employees.

"In the present case, the first respondent was equally required to compel the second respondent to register as a participating employer and also register its employees.

"It is the responsibility of the board of the first respondent to report non-compliance with the sectoral determination to the Registrar of Pension Funds whose mandate is to enforce non-compliance with the Act.

"However, the first respondent failed to comply with its responsibilities and as a result, the second respondent is not registered as a participating employer and also the complainant is not registered as a member," said Ms Lukhaimane.

She was also scathing of the Private Security Industry Regulatory Authority (PSIRA) which in terms of the Private Security Industry Regulatory Act was required to ensure employers in the private security sector complied with the sectoral determination.

"It is also the responsibility of PSIRA to take legal action and/or report non-compliance with the sectoral determination regarding the employers' participation in the first respondent and also registering their employees as members of the first respondent. However, PSIRA has also failed to comply with its responsibilities," Ms Lukhaimane said.

Ms Lukhaimane requested that the first respondent and PSIRA forward the second respondent's non-compliance with the sectoral determination and the rules of the first respondent to the Registrar of Pension Funds. She ordered the second respondent to register with the first respondent as its participating employer from 1 September 2002 and to register the complainant as a member of the first respondent from May 2008 to date.

The second respondent was also ordered to submit all outstanding contribution schedules from May 2008 to date to the first respondent in order to facilitate the computation of the complainant's arrear contributions.

The first respondent was also ordered to pay to the first respondent arrear contributions together with late payment interest.

The first respondent was ordered to provide the complainant with a copy of his latest benefit statement, within two weeks of receiving payment from the second respondent.

<http://www.fanews.co.za/article/compliance-regulatory/2/pfa-pension-fund-adjudicator/1026/pfa-ruling-should-urge-employees-to-confirm-they-are-in-fact-registered-with-a-provident-fund/15581>

IOL – Those protecting us deserve better protection - Bruce Cameron – March 16 2014 – 12:00pm

Firm intervention is required in the private security industry to ensure proper protection for its high-risk employees and their families.

It is also important for most employed South Africans, because many use private security companies in one way or another to protect themselves and their families. They stand between us and violent criminals and, as such, deserve our protection.

All private security companies are, by law, required to sign up as participating employers of the Private Security Sector Provident Fund (PSSPF), an umbrella fund. The fund provides a retirement savings element and, more importantly, group risk assurance. In fact, it is more a fund to provide assurance to security guards in case they are killed in the line of duty or seriously injured and unable to work.

There is a high-risk job and fatalities and serious injuries are not uncommon.

When participating employers sign up for any umbrella fund they must:

- * Provide the fund with a list of employees, who become members of the fund; and
- * Submit contributions deducted from the pay of employees and any contributions the employer makes within seven days of the start of the new month.

Yet time and time again problems emerge, namely:

- * Employers simply do not sign up as participating members. Some of them even deduct contributions from employees, which they steal.
- * Employers sign up but do not send in the contributions.
- * They do not keep employee/member records up to date.

The first consequence of non-payment of contributions is the loss of assurance benefits, normally after 30 days. So if a security guard is killed or injured, there may be no payment – that is, if it were not for the presence of Pension Funds Adjudicator Muvhango Lukhaimane.

She is increasingly proving to be the only person who is actively trying to protect the rights of private security guards. The extent of the problem can be seen in the fact that 60 percent of all pension fund complaints to her office come from private security guards who have discovered that they are not properly covered.

According to the Private Security Industry Regulatory Authority (PSIRA), there are about 9 000 private security companies in South Africa, employing about 500 000 people.

The flow of determinations by Lukhaimane against the PSSPF and, more particularly, against employers is consistent – yet the situation does not seem to improve.

In her latest determinations, Lukhaimane says the trustees of the PSSPF and PSIRA are legally obliged to track down and ensure that all private security guard companies are registered as participating employers with the fund; and the trustees are then obliged to ensure that employers pay over member contributions to the fund.

She says guards in the industry continue to be exploited by employers, despite numerous determinations taking employers and the PSSPF to task.

Lukhaimane has again determined that it is illegal for employers not to be registered with the PSSPF and to compound this by deducting employees' contributions that are not paid over to the fund.

It is about time the authorities started laying criminal charges against those employers not adhering to the requirement that they register with the PSSPF; and even more so when they steal contributions. What is needed is a few high-profile cases where the employers are sentenced to a prison term, preferably in a slimy green cell.

We, as users of private security, can also play a part. When you sign up to use a private security company, demand proof from the company that it is a participating employer member of the PSSPF (and check with the fund that this is in fact the case).

One of the reasons for non-membership and fraud is that disreputable companies can price their services at a lower rate than their competitors.

FUND HAD NO RECORD OF KLERKSDORP COMPANY

Klerksdorp-based ATD Security CC, trading as WRS Security Services, has been ordered to sign up its employees as members of the Private Security Sector Provident Fund (PSSPF) and to pay over outstanding contributions.

This follows a complaint by Mr S, who was employed by ATD Security from November 2007, who says he never received a benefit statement from the PSSPF confirming his membership and the amount of his fund credit. As a result, he did not know whether or not the money that had been deducted from his salary was remitted to the fund on his behalf.

The fund said it had no record of Mr S. Neither had ATD applied to participate in the fund. Yet ATD was deducting R18.57 a month from Mr S's pay.

Pension Funds Adjudicator Muvhango Lukhaimane says that, in terms of the fund's rules, "all employers in the private security sector shall participate in the fund". The rules also stipulate that "each eligible employee shall, as a condition of employment, become a member of the fund".

ATD should have registered as a participating employer of the fund in September 2002. Mr S ought to have been registered as a member from May 2008 and ATD should have paid contributions deducted from Mr S to the fund.

She says that the PSSPF is required to take all reasonable steps to ensure compliance with the requirement that all employers in the private security industry participate in the fund and register their employees as members.

The fund must also compel defaulting employers to pay outstanding contributions in respect of their employees.

Lukhaimane says the fund failed to comply with its responsibilities.

She also strongly criticised the Private Security Industry Regulatory Authority (PSIRA) which, in terms of the Private Security Industry Regulatory Act, is required to ensure that employers in the private security sector register as participating employers with the fund and to take legal action and/or report non-compliance.

Lukhaimane determined that the fund and PSIRA should forward notice of ATD's non-compliance to the Registrar of Pension Funds.

She ordered ATD to register with the PSSPF as a participating employer from September 2002 and to register Mr S as a member from May 2008 to date.

ATD was also ordered to submit all outstanding contribution schedules from May 2008 to date to the fund in order to facilitate the computation of Mr S's arrears contributions.

ATD was also ordered to pay to the fund arrears contributions, together with late payment interest.

The PSSPF was ordered by Lukhaimane to provide Mr S with a copy of his latest benefit statement within two weeks of receiving payment from ATD.

<http://www.iol.co.za/business/personal-finance/retirement/those-protecting-us-deserve-better-protection-1.1661770#.U2eCMmeKCt8>

Personal Finance – Laura du Preez – Hard work, fair play – May 8 2014 – 12:50pm

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.

<http://www.iol.co.za/business/personal-finance/retirement/hard-work-fair-play-1.1685295#.U3CyJ2eKCt8>
