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Benefit Services

Southern Africa's leading independent administrator for products and services in the retirement fund and fiduciary industies

LIGHT AT THE END OF THE SECTION 37C TUNNEL

By Giselle Gould, Director: Business Development

A long overdue rethink of section 37C of the Pension Funds Act is finally under way, following a request from the Deputy Registrar to the industry to give suggestions for amendments and submit them to the Financial Sector Conduct Authority (FSCA). It is hoped that the outcome will make decision-making relating to lump death benefits easier for trustees, and reduce the number of decisions challenged by the Pension Funds Adjudicator.

The process has been marked by a unique collaboration of industry bodies, including Batseta, the Institute for Retirement Funds Africa (IRFA) and the Pension Lawyers Association (PLA), which asked their members for input and then consolidated comments. I was privileged to serve on the Batseta panel relating to its submission.

This article touches on just three elements of a detailed submission.

BENEFICIARY FUNDS

The current situation

The reduction of the age of majority to age 18 by virtue of the Children's Amendment Act 2007 required the trustees of beneficiary funds to effect lump sum payments at age 18.

Payment of lump sums at this age is not ideal as -

- A very low percentage of learners achieve matric, or any other NQF level 4 qualification, at age 18;
- According to Fairheads' research-based feedback from guardians and caregivers, and from the actual experience:-
  - a large number of beneficiaries have elected to drop out of school once they receive their lump sum at age 18. This has an impact on their continuing education prospects, their future employment opportunities and in turn possible financial support that they might otherwise be able to provide to their families if they did have an education and employment;
  - at the age of 18, very few (if any) of these beneficiaries have the financial knowledge and other skills to properly manage lump sums. There is a very real risk that the beneficiaries receiving these lump sums will spend these funds carelessly and recklessly, with little thought of acquiring the skills to become financially independent;
  - where 18-year-old beneficiaries are counselled to seek financial advice or on how to manage their finances responsibly, less than 10% follow this advice, although this process seemed to be improving over time;
  - when given the option by a retirement fund to place their portion of a death benefit in a beneficiary fund, because they are still at school, beneficiaries seldom exercise this option. ▶

In this issue

Message from the CEO

A significant review of section 37C of the Pension Funds Act is potentially under way, aspects of which are discussed by Business Development Director Giselle Gould in the lead article of this issue of Fairheads Times. Elsewhere, David Hurford, Director: Marketing & Consulting, unpacks the FSCA sustainability guidance note and Executive Director Olefile Moea updates readers on this year's cycle of our grassroots communication initiative, the guardian roadshows. Other articles cover elements of client service, which is always at the centre of what we believe and do at Fairheads Benefit Services. I think our Rugby World Cup win has doubtless lifted the mood of the country after what has been a challenging year for many South Africans. I wish you all the best over the coming festive season and look forward to a productive and client-centric 2020!

Sincerely
Richard Krepelka,
Chief Executive Officer

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The section makes provision for the payment of a benefit to a beneficiary fund. Payment to the guardian is the default position and arises from the guardian's legal duty to manage the minor child's financial affairs and the right to decide how best to use money in the best interest of the child. To deprive a guardian of this right which is a natural consequence of guardianship, a fund must have convincing reasons.

A fund must consider the following factors:

- The guardian's personal financial and educational circumstances;
- Evidence that the guardian has squandered money in the past or been declared insolvent or had a business declared insolvent;
- Any indication that the guardian intends to use the money for something other than the minor's benefit;
- Experience handling large sums of money or any investments;
- The guardian has a legal disability (mental disability, under curatorship / administration / spendthrift).

It is not clear from the section whether there is an obligation on the fund to assess whether any of the abovementioned factors are present before payment to the guardian is made or whether the fund must only assess if for example a third party informs the fund that the guardian will squander the money etc.

Ultimately there is no guarantee that a guardian will use the money allocated to a minor for the minor's benefit (even if none of the factors mentioned above are present at the date of paying the minor's benefit to the guardian) as the financial circumstances of the guardian may deteriorate soon after payment.

Consolidated proposed solution
It is recommended that section 37C(2) of the Pension Funds Act be amended to include a new subsection (c) which will read as follows:

"(c) Notwithstanding anything to the contrary in any other law, a beneficiary or a member of a beneficiary fund will not be eligible to receive his or her remaining benefit as a lump sum until –

i he or she is at least 18 years of age, and has acquired a grade 12/matric certificate or equivalent NQF Level 4 qualification, or
ii he or she has reached age 21,

whichever event occurs earlier. If, however, the board of a retirement fund or beneficiary fund is of the view that there are sound reasons why the lump sum benefit should be paid despite the conditions in (i) or (ii) not having been met, it may pay the balance of the benefit remaining for the beneficiary or member as a single lump sum, provided the beneficiary or member is at least 18 years of age.

In addition there is a case to be made for the protection / instalment payment of lump sums for minor children, as argued by Naleen Jeram in a paper presented at the PLA Conference in 2014 that an anomalous situation exists as from 1 March 2016 it was contemplated that a retiring member at age 60/65 can no longer take his or her end benefit in a lump sum at retirement. On the other hand the law allows a minor's benefit and an 18-year-old to receive a lump sum death benefit from a retirement fund.

Comment: *This is an outcome for which Fairheads Benefit Services has long argued the case and we sincerely hope the FSCA will consider such an amendment to subsection c) of section 37C.*

THE 12-MONTH PERIOD

The current situation

Section 37C(1)(a) implies that the 12-month investigation period for trustees of retirement funds to reach their decision regarding the allocation of death benefits starts from the date of the member's death.

The situation is problematic as many families only notify the fund of the member's death following cultural rituals and the observance of a mourning period.

Consolidated proposed solution

Section 37C should be amended to make it clear that the 12-month period should only start from the time that the fund is notified of the member's death – not from the date of death itself.

This also needs to apply to group life benefits where currently the allowed period to claim is within six months from the death of the member. This too should be amended to six months from the time that the fund is notified.

Comment: *This solution would be most helpful to trustees and give them time to reach a considered decision. Indeed, the case law confirms that the 12-month period starts when the fund is notified of the member's death (Masindi vs Chemical Industries National Provident Fund and others [2016] ZAGP JH 184.*

DEFINITION OF A LIFE PARTNER / SPOUSE

The current situation

There is a legal debate as to whether a permanent life partner is a separate category.

It is often difficult for funds to establish objectively if a relationship was in fact a permanent life partnership and there may be disputing evidence and claims from families and from the alleged partner him/herself.

Consolidated proposed solution

The definition should be restructured to make it clear that permanent life partner is a separate category of spouse entirely.

Members should be required to register their permanent life partners with the fund if they want that person to be accorded the status of permanent life partner for the purposes of s37C payments – and provide details about the nature of the relationship that make it a permanent life partnership.

Comment: *This proposed solution would go a long way to helping decide complex familial and relationship challenges. Currently there is no one definition of a permanent life partner and this can lead to practical problems, for example if there are several retirement annuities or retirement fund credits and different boards of trustees reach differing decisions. A national database listing all the funds to which a person belongs would help boards to reach congruent decisions as they would have the opportunity to collaborate and arrive at consistent distribution decisions.*

> *"... potentially extremely prejudicial to both those who are expected to apply it and to those intended to benefit from its provisions."*

In conclusion, the consolidated proposed suggestions from the various industry bodies show significant progress towards finding a solution for s37C. As John Murphy stated in Dobie NO v National Technikon Retirement Pension Fund [1999] 9 BPLR 29 (PFA): *"One thing is certain about section 37C. It is a hazardous, technical minefield potentially extremely prejudicial to both those who are expected to apply it and to those intended to benefit from its provisions. It creates anomalies and uncertainties rendering it most difficult to apply."*

Yet, Murphy continues to state that "*there can be no doubt about its noble and worthy policy intentions."*

Let us hope that the submissions to the FSCA will result in these policy intentions being made possible. ■

UNPACKING SUSTAINABILITY GUIDANCE

By David Hurford, Director: Marketing & Consulting

The Financial Sector Conduct Authority (FSCA) released guidance note 1 of 2019 entitled Sustainability of investments and assets in the context of a retirement fund's investment policy statement.

Regulation 28 already requires retirement funds to consider ESG (Environmental, Social and Governance) factors before investing in an asset and the purpose of the Guidance Note is therefore to help Boards of Management comply with Regulation 28.

It is also in keeping with the FSCA's approach to 'nudge' industry players towards a desired outcome rather than prescribe the method of compliance. For those who attended the inaugural FSCA Retirement Funds Conference in September, they would be left in no doubt that the FSCA will take a more prescriptive approach if the industry does not respond swiftly and decisively.

It is therefore worth unpacking some of the key concepts in the guidance note.

- The first of these is Sustainability, which is defined in the guidance note as "…the ability of an entity to conduct its business in a manner that primarily meets existing needs without compromising the **ability of future generations to meet their needs**. Conducting business sustainably includes managing the interaction of the business with the environment, the society and the economy in which it operates towards a better long-term outcome. Evaluating the sustainability of the business of an entity includes the consideration of economic factors and ESG factors. The "sustainability of an asset" implies the sustainability of the entity giving rise to the underlying value of the asset…".

The age old approach that Boards of Management should be concerned solely with achieving the best possible returns for their members no longer stands up against this definition. Heard at the conference was the response – "what good is a pot of money to the member when they retire into an environmental and economic wasteland?"

It is also important to place sustainable investing into context. It is not philanthropy (charity) which is primarily focused on an outcome other than financial return, nor is it impact investing which aims to deliver a societal outcome first whilst achieving a competitive financial return. Rather, it is investing to deliver a competitive financial return within the constraints of the ESG factors.

- The "E" in ESG has received much attention, deservedly so. Environmental degradation has the potential to massively erode our ability to live sustainably (witness the recent water crisis in Cape Town, Johannesburg and elsewhere) and it is incumbent on every person to act within their sphere of influence to turn the rising tide.
- Governance, the "G" in ESG has also been top of mind with the many corporate governance disasters and near disasters within state-owned enterprises (SOEs) and in corporate SA in recent times.
- It is the "S" though which perhaps needs to be unpacked a little further, particularly in a South African context. It is commonly acknowledged that the economy is languishing, unemployment is at record levels, particularly among the youth, and inequality is growing. South African investors, of which Retirement Funds form a large part, must escape the vicious cycle of wealth extraction and enter the virtuous cycle of wealth creation. To do this, consideration must be given to human rights, diversity, labour relations, non-communicable diseases and transformation.

This can be done by taking Active Ownership of investment assets, which is defined in the Guidance Note as identifying sustainability concerns, ensuring that there are mechanisms for engagement with those responsible for the asset and using voting rights to address concerns which arise.

SIMPLE STEPS TO COMPLIANCE

This may sound onerous for Boards of Management, but as pointed out by Malcolm Fair, MD of RisCura, at the FSCA Conference, compliance can be achieved in four simple steps:

1. Consider Sustainable Investing and Active Ownership as a Board. Ask the asset consultant or investment manager to present on ESG factors and ensure that they are taken into consideration when investing.
2. Include Sustainable Investing and Active Ownership in your Investment Policy Statement (IPS).
3. Report on Sustainable Investing and Active Ownership practices in the Annual Financial Statements.
4. Make your IPS (or an abridged version) publicly available.

The FSCA has made it clear what it expects from retirement funds, and for now are sticking to their 'nudging' approach to achieve those expectations. There can however be no doubt that a more prescriptive approach will follow unless retirement funds act. After all, all of us would like to retire one day into a well-functioning environmental and economic society. It is within our reach – we just need each of us to play our part. Let us aim for international best practice. ■

Establishing the client relationship right from the start

By René Isaacs, Head of Operations

Being in the administration business, at Fairheads we know how vital it is to make the connection with the client right from the outset. This reassures the client, forms the basis of trust, and lays the groundwork for all future communication.

Getting the relationship right from the outset is particularly important in the case of account transfers from one administrator to another. However, accounts may be handed over without sufficient data and/or clients may be confused or even angry about how matters have been handled in the past. We have found at times that it is necessary to rebuild a level of trust.

It is also very important that staff are as caring as possible and trained in the softer skills of people management. They need to provide a sense of security, explain things clearly and work towards "stabilising" a new client.

One of the keys to success is active communication. One of the first things we did at Fairheads was to draw up a detailed written procedure for how to handle transfers. This written procedure helps to guide all stakeholders in the process, be they IT, finance or operational staff.

In addition to the formal written procedure, we follow a certain process when onboarding new clients in order to minimise disruption and ensure that we establish that all-important relationship from the outset:

- We try to get as much accurate data as possible from the previous administrator. If there is not sufficient information, we enlist the help of our in-house tracing services.
- Once we know the identity particulars are correct, we ensure that the first income payment is made as swiftly as possible, as families may have been waiting for months for income and may be in a desperate situation.
- Then we send out our standard welcome pack. We let the client know that we care about the wellbeing of the family and the beneficiary. Our pack includes a member guide about how beneficiary funds/trusts work, a newsletter for beneficiaries, contact numbers, procedures about how to apply for funds and a fee schedule.
- At this stage the new client should be able to slot into our daily processes and regular communication programme.
- Our best practice channels of accessibility include contact centres, walk-in centres (including TEBA branches), SMS and roadshows, as well as our roaming field agents.
- Most importantly, we have an ability to communicate with the client in the language of their choice.

Our systems flag special situations, such as if an account is due to terminate or if the client has special needs. In these cases, additional documentation may need to be sought and a higher level of care provided.

Nikki Overmeyer, Operations Technical Support Specialist, says: "We are proud of the way Fairheads Benefit Services handles client transfers, which are not always easy. We work from the premise that the client must come first - and this means from the very outset." ■

Guardian roadshows

By Olefile Moea, Executive Director

The Fairheads annual guardian workshops were held as a roadshow around the country between May and September – and proved once again as popular as ever, with over 60 per cent of attendees coming for the first time.

The areas we covered this year were Lesotho (four venues), North West (Rustenburg), Gauteng (four venues), KwaZulu-Natal (five venues) and Western Cape (Khayelitsha). There was a spread of rural and urban venues.

The turnout at some venues was extraordinary – on day one in Durban we had 500 people packed into the venue, with some standing room only. As is customary, someone starts the proceedings with a prayer and the group breaks spontaneously into singing. It is a moving experience and sets the scene in a very special way.

The aim of the workshops is to explain how beneficiary funds and trusts work, give updates on processes and to explain the various ways beneficiary funds and trusts can be contacted. Presentations are given in the relevant language of the region, with the presenters moving among the audience, engaging with them.
At the end of the presentations, Fairheads staff are available for one-on-one consultations to answer any questions guardians, caregivers or beneficiaries may have. This is a process that can take many hours – each person has their own story and we need to listen to them and help resolve any queries.

Fairheads has had an influx of new clients arising from fund transfers onto our administration platform. These new accounts partly explain the high attendance numbers this year, with new clients needing to be onboarded and educated.

WELCOMING BENEFICIARIES AND MEMBERS

As was the case last year, there was a focus on welcoming beneficiaries or members who are 15 years and older. With these young people, we encourage them to think ahead, for example to what subjects they should choose from Grade 10, with a view to thinking about a choice of career and tertiary education. Many guardians and caregivers did bring along the young people in their care, and we feel we are making good progress in giving them useful information. We also provide them with a newsletter that contains pertinent information related to career choices, financing your studies and options for beneficiaries that will not pursue higher education.

CONTINUALLY IMPROVING SERVICE LEVELS

Every year at our guardian roadshows, our interaction with guardians and caregivers gives us valuable feedback about how we can do things differently or better. For example, we may find out that there is a need to explain in detail what happens in the tragic case of a guardian or beneficiary passing away. This type of information is much better given face to face in advance and in the clients preferred language, so as to avoid the clients not knowing which steps to take in the event of such a tragedy.

FIELD AGENTS PREPARING THE WAY

Our roaming field agents help to prepare the way for our roadshows. This year in Lesotho in particular they proved their power, by visiting guardians and caregivers whose documentation was not up to date ("non-compliant"), following which they had time to get the necessary documents to bring to the roadshow the next day. In this way our field agents help to smooth processes and, very importantly, show people that we really care about them.

And so we have come to the end of yet another successful round of roadshows. We are very proud of this grassroots initiative which Fairheads pioneered more than 10 years ago. ■

Best practice in handling complaints

Olefile Moea, Executive Director, writes a regular thought leadership column which is published on EBnet, as a way of indicating best practice for the industry. This column below is on how to handle complaints.

Complaints are an inevitable part of any service-oriented business, but how you view and handle the complaints procedure can make all the difference between a complaint being a hassle or useful tool from which to learn and improve your service.

Ten to 15 years ago it was rare for South Africans to complain. But times have changed. People are more aware of their rights and complaints are commonplace. Companies too are more aware of the need to treat customers fairly (TCF).

Here is a checklist against which you can measure your current practice regarding complaints.

- Do you have a written complaints policy? This should give turnaround times for complaints and a documented procedure on how to handle complaints.
- Do you have a dedicated complaints department? If not at least a dedicated staff member? This person should ideally know all aspects of your business, so that they are aware of how to deal with the complaint and be empowered to address the issues
- Do you have a dedicated complaints email box? This goes a long way to letting your customers know that you take their complaint seriously.
- Who guards the guardians? Put another way, who checks on the complaints procedure? Ideally this should form part of internal audit. ▶

KYC – no, that does not stand for Know your Client but, in this case, for Know your Complainant!

- Is a complaints log compiled on a regular basis? Is this sent to the head of operations and to boards of trustees if appropriate?
- Going one step further, it can be useful to categorise complaints, for example:
  - Level one – standard complaints which will be dealt with within a certain number of days.
  - Level two – significant complaints which will be dealt with as a priority.
  - Level three – complaints of a regulatory nature, for example from the Ombud or Adjudicator. Such complaints generally need the attention of in-house or external legal expertise.
- Social media – if you get complaints for example on Facebook, what is the procedure? Best practice is to have someone constantly monitoring social media so that a response can be given within two hours, even if only to acknowledge receipt of the complaint and that it will be attended to. Acknowledgement can be given publicly on social media and then the complaint dealt with offline through direct engagement with the client.
- KYC – no, that does not stand for Know your Client but, in this case, for Know your Complainant! Who is the person complaining? Can their details be disclosed to a third party or will that be invading their privacy?
- TCF – Treating Customers Fairly is an important aspect of dealing with complaints. Complaints should be measured and dealt with in terms of TCF outcomes.
  - What is the in-house attitude towards complaints? It may sound strange, but complaints should actually be welcomed as they give the opportunity to investigate the reason for the complaint and hence give the opportunity, if the company was at fault, to rectify and improve service levels.
  - Lastly, can you go the extra mile by sending your dedicated complaints staff member on a course, such as a commercial crime or anti-corruption investigation course?

If we all pull together and take complaints seriously, the workplace and business culture of our country can only be improved.

See other Administrator's Corner articles on EBnet here https://www.ebnet.co.za/administrator-s-corner

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