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

The Age 18 issue – can we finally get there?

By David Hurford, Chief Executive Officer

David Hurford

Fairheads has over many years advocated and lobbied for the age at which lump sum death benefits are paid to the dependants of deceased retirement fund members to be increased from age 18 to 21. This is because we have witnessed first-hand the impact of paying out a large lump sum to someone who has yet to finish school. There are very few 18-year-olds with the financial wisdom to handle a lump sum wisely – and there is often also pressure from extended family members to access the money for their own purposes.

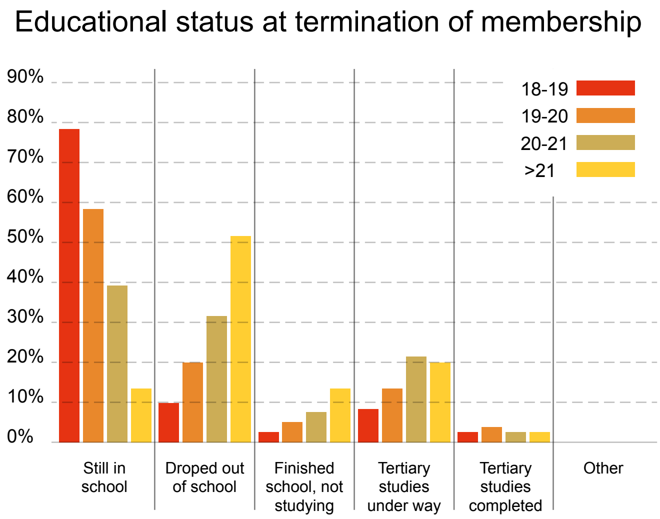
And so we are once again lobbying the authorities on the Age 18 and other issues.

STATISTICS TELL THE STORY

The Children's Amendment Act 41 of 2007 changed the age of majority from 21 years to 18 years. As a consequence of this Act, a widely held view has been that pension funds must pay out lump sum death benefits at age 18 to their members or beneficiaries other than where there is a legal disability which prevents them managing the money themselves.

In the South African context, the assumption is that minors attain the age of 18 in Grade 12, if they are in their age-related grade. However, a low percentage of children are in matric at age 18 with many in lower grades and others having already dropped out of school completely without attaining a grade 12 or equivalent qualification.

The below graph, based on Fairheads membership statistics from 2009 to present, paints the picture clearly:



The number for the group still in school is startling – 78,54% of members aged 18-19 are still at school!

The logical question that follows is whether it is in the best interests of these members to pay out large benefits to them before they have completed their schooling and have the required maturity and skills to use the benefits wisely. ▶

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EARLIER ENGAGEMENT WITH MEMBERS

In an effort to assist members to choose wisely, in 2015 the Fairheads Sponsored beneficiary fund implemented a strategy to communicate with members about their benefit from the age of 15, which would become due to them at aged 18. This strategy was aimed at providing these members with an understanding of the opportunity available to them beyond schooling.

As a result of our strategy, many members have opted not to terminate their membership of the fund but have explicitly consented to leaving their benefits invested so that they are able to continue their studies. Around 8% of assets in the Fund belong to such members. We have run a few case studies in Fairheads Times showing how some members have gone on to complete their tertiary education successfully.

WHAT ABOUT MAJOR MEMBERS IN BENEFICIARY FUNDS?

Another piece in the beneficiary fund puzzle is whether the trustees of a retirement fund are empowered to place S37C death benefits into a beneficiary fund for major dependants of the deceased? A widely held interpretation of S37C is that consent needs to be obtained from the major dependant before doing so.

Yet it is our view that beneficiary funds were established by the Authority precisely so that due care and discretion can be applied by trustees when determining whether it is in the best interest of the dependent to pay out the lump sum benefit.

There is no suggestion that adopting this view gives the trustees an unfettered discretion. Their duty to apply their minds remains, and if in doing so they find that payment into a beneficiary fund is the best solution for a major dependant, then that decision should stand.

In the Pension Fund Adjudicator's determination in the case of *Vellem (obo Vellem) v Auto Workers Provident Fund and Another* [2014] 1 BPLR 134 (PFA), paragraph 5.6 of that determination states the following:

"In distributing death benefits the trustees may pay benefits allocated to a minor dependant to such a dependant's legal guardian, trust fund or a beneficiary fund. Their preference to pay such a benefit in any one of the methods set out above must be informed by the dependant's best interests. In the same manner, a major dependant's benefits may be paid to him in cash or into a beneficiary or trust fund. The preferred method of payment must be duly cognisant of the beneficiary's best interests. There must also be a link between the preferred method of payment and the rationale behind it, especially in instances where payment into a beneficiary or trust fund is elected by the trustees over cash payment to the dependant's legal guardian (in a minor dependant's case) or the dependant himself (in a major dependant's case)"

This is best illustrated using the example of a beneficiary who displays clear signs of substance abuse. Would it be in the best interest of that beneficiary for the lump sum simply to be paid out upon attainment of the age of majority?

This view has been given effect in the rules of our Sponsored beneficiary fund which have been amended to incorporate the definition of Termination Date to allow the Board of Management to use their discretion to determine the major's ability to "… properly manage the fund credit."

CONCLUSION

It should be clear from the above that we believe strongly that there has got to be a better solution for 18-year-olds who are still at school and need professional help in managing their funds precisely at this formative stage during which they will hopefully finish matric and obtain a tertiary education – put simply, to "cross the line". As a society, we are doing them a disservice by not changing the dispensation.

Therefore, in relation to the ambiguity that exists with regard to the interpretation S37C in relation to the payment of lump sum benefits to dependents of deceased retirement fund members who have reached the age of majority, we propose 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 will not be eligible to receive a lump sum benefit until-

i. they have acquired a matric certificate or equivalent NQF Level 4 qualification, or
ii. They have 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 as a single lump sum, provided the beneficiary is at least 18 years of age."

There is some legal precedent in distinguishing between majors who have completed their education and those who have not in the Child Foster Care system. The State will continue to provide the Foster Care Grant in instances where the major has not completed school to the age of 21.

In fact, according to Dr Maureen Mogotsi, Director: Children & Family Benefits of the Department of Social Development, there is a strong desire to extend the current Child Care Grant on the same basis.

At Fairheads, we believe we have a duty to support and nurture our youth so that they have the best possible chance to complete their education. We must continue to push hard for changes which will improve their chance.

Message from the CEO

The country is slowly emerging from one of the most challenging periods in recent history. Lockdown rules have been eased for now, thanks partly to the vaccination programme rolled out by government. We encourage all our staff, members and clients to get vaccinated as part of boosting economic recovery and saving lives. We can attest to the increase in the number of death benefit claims as a result of the pandemic, with large volumes of new claims being received by our Funds. We have done our utmost to step up service levels even higher to help guardians, caregivers and members.

Our lead story was driven by the paper recently released regarding proposed changes to the Pension Funds Act. We have made a submission to the authorities, making an appeal yet again for lump sums to be paid out later than the age of 18 with our research showing that a staggering 78% of members are still in school at age 18. We believe the age for termination of an account should be extended to at least 21 or the successful completion of Matric to help reduce the dropout rate of learners at this critical point in their lives. We hope that our submission will meet with a well-considered response from the relevant authorities. We would appreciate any industry feedback on our proposal as we believe the more industry input and support we can get, the better. My email is david@fairheads.com

It is with great sadness that we heard that Allan Greenblo passed away. Most recently founder and editor of Today's Trustee, Allan played a pivotal role over many years in speaking out boldly and knowledgeably on issues relevant to trustees and in educating trustees and the public alike. Our thoughts are with his family at this time.

As you know, this year has also marked a change in the leadership team at Fairheads, with the retirement of former CEO Richard Krepelka and CIO, Marilyn Brown. They have laid an astounding foundation for me and my team to take the business forward.

I thank you for your ongoing loyalty and support and wish you a safe, restful and happy festive season.

Kind regards
David Hurford

Inheriting a house

By Lettesha Pillay,
Business Development Manager

A retirement fund and a house (fixed property) are generally the most valuable assets that people have. Yet the potential challenges and complexities of inheriting a house remain unclear to most people and the topic does not seem to have received much attention in the media.

Let's say a retirement fund member unfortunately passes away. If he/she owned a house, the property will form part of his/her estate and the applicable regulatory framework is the Wills Act and the Estate Administration Act.

If the retirement member died intestate, that is without a Will, the Laws of intestate Succession will have to be applied to distribute the net assets in the estate. This means that blood relations will inherit according to the prescribed rules of the Intestate Succession Act.

What if there are minor children?
A house can be transferred to the deceased member's beneficiaries in term of the instructions contained in the late member's Will. If there are minor children, it is important to note that a testamentary trust clause must be included in the Will. A testamentary trust is a trust created in a person's Will. This will ensure that a minor's assets/inheritance will be administered responsibly by nominated trustees on behalf of the minor beneficiary until they reach the age of majority or the termination age stipulated in the Will.

What happens if a house is inherited by several children?
This could possibly lead to conflict as the practical nature of multiple heirs to one property can be challenging.

The following options may provide a solution to the beneficiaries:

- The property could be sold by the executor and the proceeds distributed to the children. The children who are the beneficiaries would have to provide consent for the executor to proceed with the sale.
- Should one of the children wish to have sole ownership of the property, they can buy out the shares of the property from the remaining children by way of an agreement.

Lettesha Pillay

- The children could decide to inherit the property in their respective shares, rent it out, and enjoy the proceeds of the rental income jointly, in their respective shares.

The Fairheads Legacy Trust
Fairheads has a legacy umbrella trust product that can accept financial pay-outs from testamentary bequests and other settlement claims to administer on behalf of the beneficiaries. Once the estate is wound up in a testamentary trust and the assets liquidated, they can then be moved to the Fairheads Legacy Trust. One of the major assets that the executor may need to sell in order provide liquidity in the estate is the deceased's house – unless he or she specifically bequeathed it to an individual or the remaining family.

We are finding that more and more people realise that a stand-alone trust is costly to run and the investment aspect is often onerous. By pooling assets into the Fairheads Legacy Trust umbrella trust product, economies of scale are achieved, professional investment management outsourced to best-of-breed fund managers, and beneficiaries benefit from Fairheads' decades of experienced trusteeship, administration excellence, as well as professional and expert management.

The Fairheads Legacy Trust is an umbrella trust arrangement which has been designed as a cost-effective, professionally administered vehicle to safeguard assets on behalf of beneficiaries.

For more information please contact Eric Sopeni at eric@fairheads.com

Retirement fund trustees – ways of helping with tough S37C lump-sum allocations

Olefile Moea

By Olefile Moea, Director: Communications, Marketing & Consulting

One of the more onerous – and responsible – tasks of the boards of trustees of retirement funds is to determine the dependants of deceased retirement fund members and use their discretion whether to pay death benefits due to minor dependents' directly to their guardian/caregiver or to pay the money into a beneficiary fund.

Bear in mind that when a retirement member passes away, the first port of call for the family is to contact the deceased's employer. HR will then explain the role of the retirement fund trustees who need to establish all the dependants of the deceased member, tracing them if need be.

Once the dependants have been identified, a crucial part of the trustees' role and decision-making process is to assess the competency of the guardian or caregiver to act in the best interest of the child in their care. Above all, are they financially literate and will they use the funds for the child's subsistence, education and medical needs?

... will they use the funds for the child's subsistence, education and medical needs?

Trustees must gather relevant information which will help them decide whether the guardian or caregiver is able to look after a lump sum benefit on behalf of the minor. Ideally, this should be in the form of an interview with the guardian or caregiver.

Information which is useful in providing the trustees with guidance can include:

- Nature of care – parent / legal guardian / caregiver
- Education level of guardian / caregiver
- Employment status and stability of employment
- Residential status and security of tenure
- Financial position
- Credit record (default judgements, debt review etc)
- Assets to liabilities
- Income to expenditure
- Health of the guardian / caregiver
- Signs of substance abuse, mental health issues etc

Some of this information is sensitive, and it is vital to explain why the information is needed and to be discreet and tactful in the interview. Ideally, these questions should be quantifiably weighted to obtain a probability score to help guide trustees as to whether to pay a lump sum or to use a beneficiary fund which is a well-regulated vehicle with its own board of trustees and skill in the administration and management of assets.

There are many dynamics at play in a S37C case and each one needs to be considered on its own merits. For example, a guardian or caregiver may be highly educated, but are simply not able to manage their financial affairs as evidenced by a poor credit record and default judgements.

In conclusion, there are ways for retirement fund trustees to assess situations and decide how to allocate section 37C death benefits. A guardian/caregiver assessment tool as described above is simply one example.

This article is one of a series by Fairheads published on **EBnet's ADMINISTRATOR'S CORNER**.

The "impact" of retirement savings

By Dennis Murray, Asset Consultant, Old Mutual Corporate

Dennis Murray

Can retirement savings make a positive impact on society or the environment while providing inflation beating returns? Through impact investing, this is possible.

Impact investments deliver returns while "doing good" for the environment or society, such as providing cost effective quality education, building necessary roads, supporting agriculture, providing telecommunication infrastructure or developing clean energy sources such as wind or solar farms. President Ramaphosa placed emphasis on the need for such infrastructure investments in his 2021 State of the Nation Address (SONA). This was followed by a call by National Treasury for retirement funds to consider bridging the gap in infrastructure development in South Africa.

Many believe that investments which "do good" come at the expense of investment returns. This does not have to be true as these investments come in different forms with different impact goals and expected financial returns.

Direct or private investments are known to create the biggest impact. As these assets are not traded on stock exchanges, they are not priced and sold as often as listed investments. They generally require the assets to be held for a long time and a more "hands on" approach by investors to ensure that the projects are a success. We describe these as "alternative investments".

An appropriate portfolio structure and appropriate skills and expertise are needed to be able to deliver on both impact and inflation beating returns in such alternative investments. The Fairheads Independent Beneficiary Fund achieves this through investment in the Old Mutual Growth Series Portfolios. The Old Mutual Alternative Investment (OMAI) and African Infrastructure Investment Managers (AIIM) teams, who manage the alternative investments in the Growth Series Portfolios, have more than 21 years experience in impact investments. They target an investment return of "inflation+7%" per annum over the lifetime of the projects.

The Fairheads Independent Beneficiary Fund, through these investments, is making a difference to society whilst ensuring that our beneficiaries earn stable inflation beating investment returns.

... and a more "hands on" approach by investors to ensure that the project is a success.

Recent appointment - Ntombizethu (Zethu) Sibisi: Business Development Manager

Ntombizethu (Zethu) Sibisi

I was delighted to join Fairheads recently in the capacity of Business Development Manager. I had long dealt with and respected Fairheads through my involvement with the beneficiary funds of the Municipal Councillors Pension Fund and the Mineworkers Provident Fund. Fairheads' values align with mine – playing a transformative role in beneficiaries' lives and thereby helping families and communities.

My areas of responsibility within Fairheads are business development, managing our tracing solutions, consulting as well as pension-backed lending. I also work closely with the consulting team who refer potential new clients to me so that I can explain how Fairheads operates. We attend death benefits allocation meetings and avail clients of our expertise, including the use of our guardian questionnaire which helps to establish guardian competency when it comes to using funds responsibly in the interests of the children in their care.

My vision is focused largely on growing the tracing function within Fairheads to make sure that every child who has been allocated funds is identified as swiftly as possible and is able to be sustained and attend school. Unless tracing is swift and effective, children can lose out on vital years of education if the family cannot afford it. We have an excellent tracing team and aim to grow our book in tracing.

Fairheads has two unclaimed benefit funds and we aim to grow this book. We therefore aim to vastly reduce unclaimed benefits and are seeking new ways to achieve this, in particular currently with regard to Mozambique.

My career background of some 22 years spans both the public and private sectors. Within the public sector my focus was on good governance, compliance and human resources, with experience gained at National Treasury, the Human Sciences Research Council, the Department of Water Affairs and the University of KwaZulu-Natal. I also dealt with insurance and loans at IEMAS Financial Services before reintroducing myself to the employee benefits sector.

Meeting clients' needs

In line with Fairheads' focus on client-centric service, we listen to what our clients need and work as hard as possible at ensuring that all our beneficiaries receive their benefits. In this time of COVID-19 many families have become desperate for money to help boost household income and hence sustain and educate children.

Clients are also keen to see that we communicate regularly and well with members. This we do via phone, SMS and, in lockdown periods, via virtual webinars. We also look forward to holding our Guardian Roadshows as soon as the lockdown levels permit.

Most importantly, we pride ourselves in our success in establishing solid relationships with the guardian/caregiver and member right from the start, explaining how beneficiary funds work and how they can keep in touch with us. Right now we are into the period where school fees and uniforms will need to be paid for early next year, and we are communicating accordingly, so that guardians/caregivers can provide us with school details and we can pay the school fees directly and timeously to the institution in question.

Clients are also keen on refresher training which we provide on a needs basis.

All in all, I have a great team around me and am very proud to be working with Fairheads which has such a longstanding and strong reputation in the market as the leading independent service provider for beneficiary funds.