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

Trustee discretion under Section 37C of the Pension Funds Act: evaluating modes of payment for vulnerable beneficiaries

By Khatoon Smith, Legal Manager

INTRODUCTION

When a retirement fund member passes away, dependants are often entitled to death benefits payable from retirement funds and associated group life insurance schemes. Section 37C of the Pension Funds Act 24 of 1956 governs the distribution of death benefits, granting trustees discretion over both allocation and mode of payment. In *Mbatha v Transport Sector Retirement Fund* [1], the court confirmed that such decisions constitute administrative action under the Promotion of Administrative Justice Act 3 of 2000, requiring fairness, rational reasoning, and accountability.

For retirement fund trustees, an important consideration is the appropriate mode of payment of death benefits. Options include placing benefits in trusts, paying them directly to beneficiaries, paying them to guardians or caregivers of vulnerable dependants (whether minors or adults lacking capacity), or allocating them to regulated beneficiary funds. Each choice carries significant consequences for the financial security and long-term welfare of beneficiaries, and trustees must weigh these implications carefully within the framework of the Pension Funds Act.

SECTION 37C

Section 37C of the Pension Funds Act empowers trustees to determine the most appropriate mode of payment of death benefits and establishes a protective framework for the distribution, particularly where beneficiaries are vulnerable and unable to manage such benefits themselves. The provision recognises that minors, as well as adults lacking capacity, cannot directly receive or administer these funds. Trustees are therefore empowered to exercise discretion in directing payments in a manner that safeguards the welfare and financial security of such beneficiaries.

Khatoon Smith

When considering the mode of payment trustees must consider, in the case of minors, factors such as:

- value of the benefit;
- qualifications (or lack thereof) of the guardian or caregiver to administer a benefit;
- ability of the guardian or caregiver to administer a benefit; and
- that the benefit should be utilised in such a manner that it can provide for a minor until he/she attains the age of majority.[2]

1 [2020] ZAGPJHC 18.
2 Ramanyelo v Mine Workers Provident Fund [2005] 1 BPLR 67 (PFA).

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A similar process applies to adult dependants who lack capacity. In *Mafe v Barloworld (SA) Retirement Fund*[3], the Pension Funds Adjudicator held that trustees must not fetter their discretion or rely on assumptions about a major's ability to manage funds. Instead, they are required to conduct their own investigation, distinguish between legal incapacity and perceived incapacity, and properly consider the costs and appropriateness of different modes of payment before deciding to place benefits into a trust or other structure.

This discussion will focus specifically on situations where beneficiaries lack legal or practical capacity to manage benefits themselves. In such cases, trustees must weigh the advantages and disadvantages of each mode of payment to ensure that the welfare and financial security of vulnerable dependants are safeguarded.

TRUSTS

Trusts established to receive benefits under section 37C of the Pension Funds Act are governed by the Trust Property Control Act 57 of 1988, the Income Tax Act 58 of 1962, and other relevant legislation. In certain cases, these trusts may also be required to obtain a FAIS license if they provide financial services.[4]

The trust deed must ensure that the benefit vests in a named beneficiary rather than a group of beneficiaries. Trusts offer flexibility and can be tailored to the specific needs of beneficiaries. Importantly, trust assets are legally separated from the personal estates of trustees managing the trust,[5] guardians, or caregivers. Any investment income earned within the trust is taxable.

The advantages of making payments to trusts include the protection of beneficiaries' assets, regular distributions for education and living expenses, and continuity of financial support. However, trusts also present challenges. Administration is complex and requires a thorough understanding of the regulatory framework. Increasing compliance obligations raise administration costs, and the effectiveness of a trust depends heavily on the competence and integrity of its trustees. Beneficiaries, guardians, or caregivers may also experience reduced flexibility, as access to funds is restricted by the terms of the trust deed.

DIRECT PAYMENTS TO GUARDIANS

Direct payments to guardians or caregivers offer the advantage of immediacy. Guardians or caregivers gain access to funds without delay, allowing them to meet urgent needs such as food, housing, or medical care. Administration is simple, with no ongoing reporting obligations.

However, direct payments also pose significant risks. In practice, these funds are generally held and managed in the guardian's own name, with the expectation that they will apply them for the beneficiaries' maintenance. Once outside the regulated environment of a retirement fund, there is no structured oversight. The absence of monitoring increases the likelihood of misuse, leaving beneficiaries vulnerable. If a guardian dies while holding the benefit, funds may even form part of their estate, jeopardising the beneficiaries' entitlement. Tax will be payable on any investment income earned.

BENEFICIARY FUNDS

Beneficiary funds, introduced through amendments to the Pension Funds Act in 2008, were designed to address the oversight gap inherent in direct payments and potential risks associated with trusts. These regulated structures provide regular disbursements to ensure that beneficiaries receive sustained support rather than a single lump sum. They also allow for prudent investment growth, preserving benefits for long-term needs such as education and healthcare. The use of beneficiary funds is also available to adults, with consent, as a voluntary option for the administration of benefits in a tax-exempt environment.

The structure of beneficiary funds ensures that assets are legally protected and ring-fenced for the benefit of the beneficiary. They are excluded from any other person's estate, and investment growth accrues directly to the beneficiary. Oversight is provided through fiduciary regulation by the Financial Sector Conduct Authority, which enforces accountability and minimises the risk of dissipation.

The advantages of beneficiary funds are considerable. Investment income is tax-exempt[6] and payments made to beneficiaries are tax-free[7],making them highly tax-efficient. Regular disbursements provide continuity of financial support, ensuring that funds are preserved for long-term needs such as education, healthcare, and living expenses. Transparency and governance are built into the system, giving trustees confidence that benefits are safeguarded and beneficiaries assurance that their welfare is protected.

3 [2008] 1 BPLR 67 (PFA).
4 Financial Advisory and Intermediary Services Act 37 of 2002.
5 Trust Property Control Act 57 of 1988, S12.
6 Income Tax Act 58 of 1962, s10(1)(d)(i).
7 Income Tax Act 58 of 1962, s10(1)(d)(gE).

The limitations of beneficiary funds relate mainly to fund costs, as fees may reduce net benefits slightly. Even so, the regulated environment, tax efficiency, and strong governance framework make beneficiary funds a secure and dependable mechanism for safeguarding the interests of vulnerable dependants.

CONCLUSION

Section 37C of the Pension Funds Act entrusts boards with a discretion that must be exercised fairly, rationally, and with due regard to the circumstances of each dependant. Trustees cannot adopt rigid rules or rely on assumptions; instead, they must investigate the facts of each case, evaluate the suitability and ability of guardians or caregivers, and consider whether adult dependants truly lack capacity. Ultimately, trustees must balance efficiency, oversight, cost, and flexibility while safeguarding the long-term welfare and financial security of vulnerable beneficiaries. ■

MESSAGE FROM THE CEO

David Hurford

In this year-end issue of Fairheads Times, we lead with a timely reminder of Section 37C and the fiduciary duty of trustees to assess carefully how best to ensure the care of vulnerable minors, with the focus on their education. We believe strongly that the decision to place monies in a beneficiary fund, far from disempowering guardians and caregivers, rather empowers them to make the best decisions and ease the burden of care placed on them.

While the focus on beneficiary funds must be education, it is not necessarily only education-related expenses that we approve; if there are sufficient funds, we consider payment of a variety of expenses that would benefit the member, such as accommodation, transport and cellphone costs. The article on non-educational requests in this issue makes for interesting reading.

Guardian roadshows

Our annual guardian roadshows have recently ended, with very positive feedback. This year, for the first time, we partnered with an NGO, the Imbeleko Foundation, to engage with younger attendees, 15 years and upwards, around career-related issues. Read on page 6 how teenagers responded to the innovative approach adopted. This initiative forms part of Fairheads' broader *Khanya Nathi* (Let us Shine) programme, a journey of empowerment, connection, and hope, reflecting Fairheads' commitment to service excellence, ensuring our members have the opportunity to shine.

Through *Khanya Nathi*, we aim to support and empower parents, guardians/caregivers and beneficiaries with tools to nurture their children's early development, improve financial literacy, and develop academic and career related skills. In addition, our members will benefit from key insights into the importance of psycho-social wellbeing.

Compliance matters

On the legislative front, the COFI bill is in progress. In preparation for this we have been busy ensuring alignment with the FSCA Conduct Standard 2 and King V.

In closing, I would like to thank clients and staff for their ongoing support and dedication. It has been a very special year for us as 2025 marks the 100th anniversary of Fairheads as a business. We are proud to have carried the legacy forward.

On behalf of all of us at Fairheads, have a wonderful festive season.

Kind regards
David

Going above and beyond education

Rene Isaacs

By Rene Isaacs, Operations Manager

Fairheads Benefit Services has long regarded education as the cornerstone of responsible financial management within beneficiary funds and umbrella trusts. Education remains the primary use of assets held on behalf of our members and beneficiaries, forming the largest share of annual withdrawals and the most significant pathway toward long-term empowerment as we assist them towards adulthood.

Education-related expenses include school/tertiary education fees, transport, uniforms, stationery and books, and student accommodation. Recognising the administrative burden of guardians and caregivers applying to the trustees for these expenses, Fairheads has introduced an industry-first annual educational allowance, enabling guardians and caregivers who qualify to access a single lump sum to cover the above without needing to submit individual invoices or proof of payment.

Non-educational payments

While education provides the foundation, however, we recognise that a member's wellbeing, stability, and community integration often depend on a wider set of needs. For this reason, we also process a broad spectrum of non-education expenses when these align with the best interests of the member and comply with fund rules.

A sample analysis of one of Fairheads' funds over a six-month period in 2025 reveals a interesting pattern of the types of expenses that guardians or caregivers request beyond schooling. The number of transactions is high, at 5,535. A description of some of these requests per category as shown below offers interesting insights into the real-life circumstances of members or beneficiaries who rely on beneficiary funds and umbrella trusts for day-to-day support.

Clothing

By far the highest non-education transactions recorded (2,379) were for clothing. This is a sobering reality, indicating that many households battle to afford clothing within their monthly budget.

Boosting monthly income

Next highest were requests for daily living expenses (1,268) and groceries (469). Again, households are battling to come out given the high cost of living.

Cellphones

Other significant transactions recorded related to cellphones (247). This stands to reason as ownership or use of a mobile device is nowadays indispensable, for example for emergency situations, online education and staying in contact with loved ones.

Accommodation

Common non-education transactions recorded were payments for rental costs (265) and accommodation (291), the latter relating largely to assisting tertiary students to live close to their place of study. Related to this were requests for building costs (23 transactions), house purchases (7 transactions), renovations (2) and home loan payments (3) These figures reflect a fundamental reality: if children do not have a roof over their heads, how can they even go to school? In cases where a guardian or primary caregiver passes away, minor dependants may be left in precarious living conditions. Beneficiary funds and umbrella trusts can therefore play a critical role in ensuring children have safe, adequate accommodation, whether through structural repairs, building additional rooms, or facilitating the purchase of a modest family home. Furniture and appliances also featured at 154 transactions.

Transport and mobility

The data also shows vehicle purchases (12 transactions) and airfares (7 transactions). Transport-related expenses typically arise when guardians require reliable mobility to take minors to school, medical appointments, therapy, or family members. In rural or geographically dispersed communities, safe and reliable transport can significantly improve a child's access to essential services.

Airfares (7), while less common, are often connected to family reunification, medical travel, or the relocation of minors when care arrangements change. These are evaluated carefully to ensure they serve the child's best interests.

For older members, we had requests relating to learner's driving licence fees (18) and driving lessons 30.

Entrepreneurship

Business start-up capital (9 transactions) is another notable category. This tends to apply to older minors or major members who may be establishing a small enterprise to support themselves or gain experience. Fairheads assesses these requests strictly to ensure they are feasible, responsible and aligned with the young person's long-term development.

Medical costs and psycho-social wellbeing

Requests for medical costs, spectacles and medical aid contributions totalled 421; in addition, a smaller but important category includes addiction rehabilitation (6 transactions). Rehabilitation support may be authorised in cases where a member requires treatment for substance-related challenges. Such interventions aim to safeguard long-term well-being and prevent further social or educational disruption.

Celebrations and rituals

Certain expenses relate directly to life events, such as birthday parties (71 transactions) and holiday expenses (4 transactions).

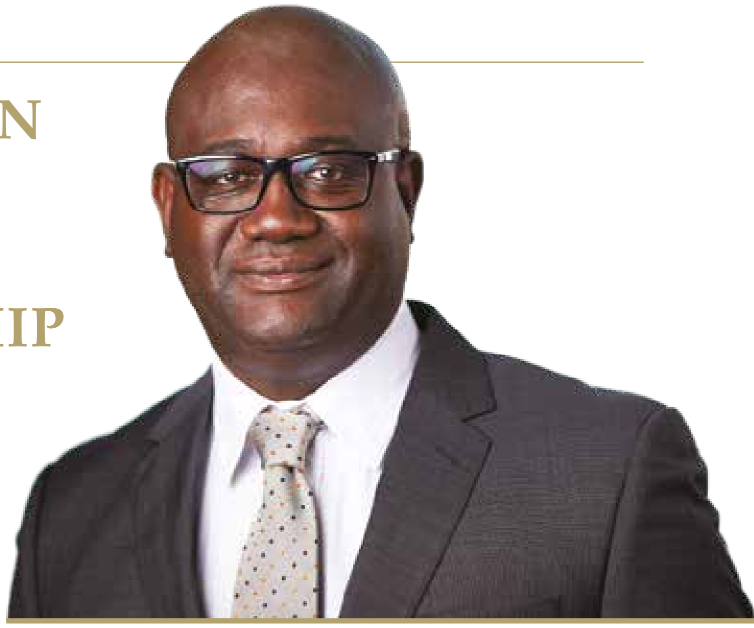
On the cultural side, ceremonial costs such as unveiling ceremonies (9), initiation costs (16) and traditional healing (4 transactions) are allowed when they support a beneficiary or member's well-being and to help stay connected to their identity, traditions and community. Funeral-related transactions totalled 9.

Supporting children holistically

What emerges from the above is a clear picture: Fairheads is not merely an education funder; it is a guardian of holistic childhood development. Our approach recognises that education is most effective when a child's broader needs - emotional, cultural, physical and social - are met.

Each non-education payment is subject to strict governance and documentation requirements, ensuring funds are used responsibly, transparently, and in the best interest of the minor. By supporting a wide range of essential expenses, Fairheads helps families create stable environments where children can thrive, learn and ultimately transition confidently into adulthood.

Fairheads' guardian roadshows break new ground with Imbeleko partnership



Olefile Moea

By Olefile Moea, Executive Director

The long-running Fairheads guardian roadshows, already known for their pioneering contribution to grassroots financial literacy, reached an exciting new milestone this year. For the first time, the programme included a dedicated psycho-social and career-development component for teenagers, thanks to a partnership with the Imbeleko Foundation. This collaboration marked a significant step forward in Fairheads' commitment to empowering its younger beneficiaries, particularly those aged 15–17, who stand on the cusp of critical life decisions.

This year marked the beginning of a rolling three-year roadshow cycle, with workshops rotating across key provinces to reach as many guardians, caregivers and young members/beneficiaries as possible. Recent months saw workshops being held in KwaZulu-Natal (Durban, Empangeni, Nongoma, Ladysmith and Pietermaritzburg), the Western Cape (Worcester, Cape Town CBD, Khayelitsha) followed by Rustenburg in the North West, and Soweto in Gauteng.

These events have consistently attracted high engagement, but a standout development this year was the increased turnout of younger members. This aligns strongly with Fairheads' *Khanya Nathi* ("Let us shine") programme, through which we have prioritised supporting adolescents with essential life skills such as career choices, obtaining an ID, and opening a bank account.

The Imbeleko Foundation
The Imbeleko Foundation, supported by Fairheads' CSI initiatives since COVID, states as its vision specialising in nurturing socially marginalised rural learners into future-ready, globally connected citizens. Their expertise in career advice and youth development made them the perfect partner our guardian roadshows.

Imbeleko's contribution began with an uplifting half-hour motivational session aimed at both guardians and the youth. The talk emphasised resilience, self-awareness, and the importance of purposeful career planning, reinforcing the need for guardians and teens to collaborate in shaping future paths.

The focus then moved onto the teenagers. The *True Colours Personality Assessment* was used which is a fun, interactive exercise to help people explore their strengths, learning styles, and potential career directions.

The excitement was palpable: teens eagerly connected to Wi-Fi, downloaded the supporting app, and enthusiastically worked through the colour-coded personality indicators.

Imbeleko also introduced *CareerXplora*, a digital platform that allows learners to continue career exploration independently. This tool provides mentorship, career resources, and subject-choice guidance, ensuring that the impact extends well beyond the workshop day.

One of the strongest successes emerging from the exercise was the clear demonstration of need. Imbeleko's facilitators noted a visible need for career support among youth beneficiaries.

The collaboration also showed guardians and caregivers the value of career guidance and psycho-social support, reinforcing Fairheads' broader mission of enabling members and beneficiaries not only to manage their funds wisely but also to plan confidently for the future.

Conclusion
The 2025 guardian roadshows have undoubtedly broken new ground. By positioning career exploration

and psycho-social support at the heart of the programme, Fairheads has not only met a pressing need among younger members and beneficiaries but has also strengthened the overall value of our educational outreach.

Partnering with a specialist youth-development organisation such as Imbeleko has elevated the experience, bringing expert facilitation, digital tools, and interactive exercises that resonate strongly with teens. More importantly, it has helped build confidence, spark curiosity, and empower young people to imagine and plan for a brighter future.

We will be continuing and growing this exciting partnership. We believe the enthusiastic participation shown by teenagers, as well as positive feedback from guardians and caregivers, has vindicated our decision to incorporate a structured youth-focused component into the roadshow.

Till next year! ■

The Imbeleko Foundation

The Imbeleko Foundation was created in 2010 by former banker, Sbusisiwe ‘S’bu’ Myeni, and her late sister, Dr Seni Myeni-Offiah. Rooted in KwaZulu Natal, the foundation provides holistic education and support for vulnerable children in their childhood community. Imbeleko currently runs two core activities: a series of afterschool programs and a scholarship fund. A number of other initiatives, ranging from nutrition and food, healthcare, mentoring, sports, arts and culture, and family counselling provide needed peripheral support to the children’s families to ensure their educational success.

In Nguni culture, Imbeleko is a ceremonial celebration that introduces and welcomes a newborn child to living and ancestral spirits. The ceremony summonses good health and a prosperous life journey for the child.

Market update

By Mo Selepeng, Chief Operating Officer, Mila Risk Management Solutions

Mo Selepeng

Introduction

The 2025 investment landscape has been shaped by an unusual combination of geopolitical shifts, policy uncertainty and renewed optimism across global markets. While inflation and interest rate trajectories have remained central to economic debates, investor sentiment has swung sharply throughout the year in response to political decisions made in the United States and evolving economic dynamics in emerging markets. At the same time, technological innovation and commodity strength have provided stabilising forces, offering pockets of resilience despite global volatility. Against this backdrop, both global and domestic markets have navigated a complex environment, marked by risk, but also meaningful opportunity.

GLOBAL

Globally, the markets this year have been dominated by the actions of President Donald Trump. Prior to last year's US presidential elections, there had been expectations that interest rates would start coming down as inflation had been tamed. However, after President Trump was elected, one of his headline policies – tariffs – started to worry the markets.

Tariffs, which are a tax on imports, raise the cost of goods and services. This can lead to inflation, which would require interest rates remaining higher for longer – something the markets generally do not like. The April 2nd 'Liberation day' announcement saw the US imposing steep tariffs on many countries around the world, including South Africa. This caused markets to plunge.

However, these tariffs were generally reduced or postponed. This then led to markets recovering,

and this positivity has continued throughout most of the year. Further driving equity markets has been the excitement of artificial intelligence and related technology stocks. Their earnings have continued to look positive, driving stock prices higher and higher.

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However, these tariffs were generally reduced or postponed. This then led to markets recovering, and this positivity has continued throughout most of the year. Further driving equity markets has been the excitement of artificial intelligence and related technology stocks. Their earnings have continued to look positive, driving stock prices higher and higher.

Inflation levels have reduced from previous years, but generally remain above most central bank targets. Given the growth in economies, most central banks have been cutting their respective interest rates, including the US Federal Reserve. The cuts though have been shallower than what had been expected towards the start of the year. Central banks have erred on the side of caution, given that inflation levels are still higher than target.

Commodity prices have generally risen sharply over the year. Gold, in particular, has seen strong flows as investors and central banks diversify away from the US dollar, which has subsequently decreased over the year. The Rand, and many other emerging market currencies, have benefitted from this.

Domestic

Locally, the Johannesburg Stock Exchange has shown strong equity price increases. In particular, the resource sector has had the highest price revaluations, given the good performances of commodities.

The Government of National Unity has had its moments of vulnerability, such as with the failed Budgets at the start of the year. But the GNU has continued to hold, and there have been improvements from Operation Vulindlela and some public private partnerships.

In November, the Medium-term Budget Policy Statement was delivered by the Finance Minister. It showed that the fiscal position was slightly improving. In addition, there was the much debated announcement of a new inflation target of 3%, moving away from the 3% - 6% inflation target band. The Governor of the Reserve Bank had publicly advocated for this for some time. This should result in lower inflation over the medium to long-term, along with lower interest rates, which would benefit individuals, businesses and also the Rand.

Conclusion

Overall, 2025 has been a year defined by adjustment and recalibration across markets. Despite moments of volatility, particularly around shifting US tariff policies and persistent inflation pressures, global markets have generally trended positively as technological innovation and resilient economic activity have supported growth. South Africa, too, has shown encouraging signs, with stronger commodity performance, improving fiscal signals and progress within the GNU all helping to lift market confidence.

Looking ahead, the combination of easing global inflation, the prospect of gradually lower interest rates and ongoing structural reforms domestically suggests a more stable environment for investors. While risks remain, particularly around global political developments and the pace of economic recovery, the foundations laid this year point to a cautiously optimistic outlook for both local and international markets.

Umbrella trusts in practice - a case study

Eric Sopeni

By Eric Sopeni, Consultant

Umbrella trusts are mostly used by middle-income families, employers seeking to support employees, and individuals who want to ensure that vulnerable dependants, such as minor children, students, parents or people with disabilities, are financially protected.

Each situation is however unique, as the below case study illustrates.

An employer approached us with a unique situation: the children of a late employee were living in a children's home. The employer was concerned that paying the entire death benefit as a lump sum to the home might not guarantee long-term support for the children's daily needs and education. Instead, they wanted a solution that would provide sustainable care

Rather than transferring the full amount to the children's home, the employer opted to establish an umbrella trust that would:

- Pay a monthly income to the home for food, clothing, and daily living expenses.
- Cover school fees, stationery, and other educational costs.
- Ensure long-term financial stability for the children until they reach the age of majority.

This approach provided the children with consistent support and access to education, while giving the employer confidence that their responsibility was fulfilled ethically and effectively.

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