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Protecting members' interests – tighter regulations and reporting requirements on contributions

Members of retirement funds have different needs, time horizons and options available to them to target their specific outcomes throughout their journey to and into retirement. Achieving a reasonable outcome in retirement for members is therefore the main objective for the establishment of a retirement fund. In a defined contribution fund, the timeous payment and investment of the contributions are critical to ensure growth of the members' assets within the fund.

As part of the fundamental duties of the board, they are required to always act in the best interests of members and, by extension, the members' beneficiaries. TCF (treating customers fairly) ensures that the customer (in this case the member) is central to all decision making.

Timeous payment and investment of contributions are critical

TCF is already embedded in the Policyholder Protection Rules (PPR) when it comes to group risk benefits and is a critical component within the Conduct of Financial Institutions Act (COFI). A key factor to improving and ensuring that members are fairly treated is ensuring that the contributions committed to in terms of the rules of the fund are adhered to by the employer and paid over timeously.

The Conduct Standard has replaced Regulation 33

Previously Section 13A and Regulation 33 to the Pension Funds Act (PFA) set out the requirements relating to the payment of contributions by employers to funds. Regulation 33 has now been repealed with effect from 27 January 2023, and replaced by the Conduct Standard which came into effect from 20 February 2023.

FSCA concerns with the existing law

The Financial Sector Regulatory Authority's mandate is to protect the interests of members of funds, while holding boards of funds, authorised persons and contractors accountable. However, the FSCA identified the following concerns with the existing law:

- Standardised reporting by principal officers and funds is required.
- Undesirable practices and outcomes were noted where a fund outsources its responsibility to recover outstanding contributions from an employer to an attorney or third party. Examples are:
- failure to provide proper instructions to the attorneys
- exorbitant fees being charged
- attorneys retaining interest on contributions that are collected.
- Potential drafting improvements for clarity of the requirements were identified relating to:
- payment of pension fund contributions to retirement funds
- reporting of contraventions.

Taking the above into account, the Conduct Standard reinforces and is consistent with the objectives of the Financial Sector Regulatory Authority. The key points contained in the Conduct Standard are as follows:

Minimum information to be contained in a contribution statement

A fund must notify every employer before they join the fund and annually thereafter of the employer's duties, obligations and liability under section 13A of the PFA and this Conduct Standard. The FSCA will determine the format for that notification.

The minimum information to be provided by an employer to a fund in an initial contribution statement (or the monthly schedule if this information has changed for a member) must include the:

- name of the fund
- fund registration number
- period for which the contribution is payable
- name and address of the employer establishing or participating in a fund
- paypoint which made the deduction if an employer has multiple paypoints
- contact person at the employer or paypoint dealing with enquiries relating to contribution statements and payment of contributions
- identity of the person at the employer who is personally liable for compliance with the legislation (section 13A of the PFA and the Conduct Standard)
- for each member, their:
- full name
- date of membership
- date of birth
- South African identity number or passport number.

Subsequent contribution statements provided by the employer to the fund must contain:

- any changes to the member's personal information
- the membership number allocated to each member by the fund
- any changes compared to the previous contribution statement showing any differences in the data, including new members, membership terminations, adjustments as a result of changes in pensionable salary, additional voluntary contributions and corrections due to error or any other information.

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The data requirements for members in particular are similar to those required in terms of the Policyholder Protection Rules (PPR) for the group risk benefits. Hence we see the regulators' line of sight is always directed towards the members to ensure that information is shared on benefits, reporting of information and notification of any breaches.

Reporting

There are set reporting requirements, which are summarised below:

What must be done or reported?	Who is responsible?	Report to	Timeline
Matters previously reported on were not resolved or any new compliance matters have arisen	The person responsible for checking that the contributions are received into the fund's bank account	Principal officer or monitoring person	15 days after the end of the month applicable
Submit a written report about every relevant employer if non-compliance occurred or if previous non-compliance is still unresolved	Principal officer or monitoring person	Board	7 days after the receipt of the above report
Any material contravention or failure to submit the employer schedule or contributions timeously	Board to communicate	(1) Each affected member, or all members where affected members cannot be identified, and (2) The FSCA	30 days after the board has been informed
Any material contravention or failure to submit the employer schedule or contributions timeously that continues for a period of 90 days	Principal officer or monitoring person	(1) South African Police Service, and (2) Communicated to the affected members, or where affected members cannot be identified, all members (or all members relating to the participating employer)	14 days after the expiry of the 90-day period of continued contravention

Interest on late payments

Compound interest on late payments or unpaid amounts must be calculated from the first day following the expiry of the period during which such amounts were payable until the date of receipt by the fund. The applicable interest rate is the prime rate plus 2%.

Late payment interest is investment income for the fund. It must be paid to the fund by no later than the end of the second month following the month during which the amount is payable.

Outsourcing of the recovery of arrear contributions

If a fund outsources the collection of outstanding contributions to attorneys, the trustees are responsible for:

- considering any actual or potential conflict of interest in the selection and appointment of an attorney
- considering any approved policies of the fund relating to conflict of interest and outsourcing to avoid any conflict of interest
- ensuring that fees payable to the attorney are reasonable and commensurate to the service provided and do not impede the delivery of fair outcomes to members and the fund
- entering into an agreement with the attorney which provides for at least the following:
  - any amount recovered by an attorney for arrear contributions must be transferred to the fund's bank
  - issuing an account within 7 business days of receipt of such amount
  - the fee structure
  - specific instructions relating to the steps the attorney must take should the employer fail to pay the arrear contributions on demand
  - anticipated timelines in recovering all arrear contributions
  - frequency of reporting by the attorney to the fund on the status of payments made by the employer.

Employers will need to ensure that the contributions continue to be paid on the seventh of the month following the due date and comply with the relevant regulatory requirements to avoid falling foul of the law. There is equal responsibility imposed on the relevant parties required to report on these transgressions, which will need to be monitored every month.

These regulations ultimately protect the members' interests and ensure that contributions that are deducted from their salaries are paid over and invested for their future.

It is therefore imperative that both employers and trustees ensure that they are fully aware of the requirements placed on them with these changes and that these are properly implemented in practice.