OMBUDSMAN OF FINANCIAL SERVICES
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WHAT YOU NEED TO KNOW ABOUT RETIREMENT FUNDS:

How to lodge a complaint with the Ombudsman of Financial Services

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FOR many workers, a retirement fund is one of the most important forms of long-term financial protection.

It can provide support when you retire, and in some cases when you become disabled or die before retirement.

Many people, however, do not fully understand how these funds are disbursed and allocated, who make decisions about the money, or what happens when there is a dispute.

The Ombudsman of Financial Services (OFS) is an independent body that deals with disputes involving non-bank financial services providers (FSPs) licensed by the Financial Services Regulatory Authority (FSRA).

The types of services on which we receive complaints include retirement funds, investments, insurance, medical aid schemes and savings and/or credit.

This article explains how retirement funds work, what trustees are expected to do, how death benefits are distributed and where members can turn for help when disputes arise.

In the country, retirement funds are regulated by law, the Retirement Funds Act, 2005 and complaints involving them can be lodged with the OFS.

The law sets out how funds should be managed; how benefits should be paid; and how members and their dependants and/or beneficiaries should be protected. In simple terms, a retirement fund is a long-term savings arrangement that helps provide financial support later in life.

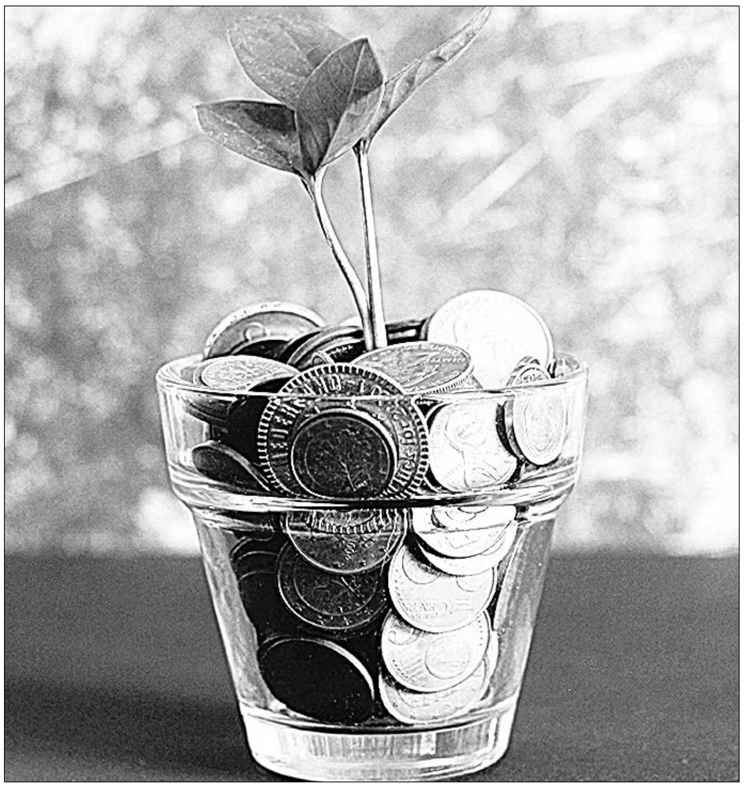
HOW RETIREMENT FUNDS WORK

A retirement fund is a pool of money set aside to support you later in life. It is meant to help you when you retire, and, in some cases, if you become unable to work. Over time, money is paid into the fund through regular contributions, usually from your salary and sometimes from your employer as well.

These contributions are then invested so that your savings can grow. The purpose is to give you and your family greater financial protection in the future.

THE RULES THAT GOVERN THE FUND

Every retirement fund must operate according to the Retirement Funds Act, 2005 (the law) and that particular fund's own set of rules.



These rules are very important because they explain how the fund works; who qualifies for membership and benefits; how decisions are made; and how the fund must be governed.

You can think of the rules as the fund's guidebook. If any rule conflicts with the law, the law takes priority.

WHO OVERSEES THE FUND?

A retirement fund is overseen by a board of trustees or fund management board. The responsibility of the board is to safeguard and protect the interests of members and make sure the fund is run properly.

The law requires a board of at least four trustees, with employers' and employees' representatives, each having an equal say in appointing these representatives.

This balance helps ensure that the fund is not controlled by one side only. Trustees must act with care, honesty, diligence and fairness at all times. They must avoid conflicts of interest and make decisions in the best interests of members and beneficiaries.

The law requires that every fund must have a principal officer, who handles administration and helps ensure that the board's decisions are carried out. Although your employer may participate in the fund, the fund itself is not simply an extension of the employer. It must be run according to the law and the fund's rules.

WHY RETIREMENT FUND BENEFITS ARE HANDLED DIFFERENTLY

One important thing many people do not realise is that money in your retirement fund does not automatically form part of your estate when you die.

This means that it is not simply paid out according to your will. Instead, the fund must follow the law and its own rules when deciding who should receive a benefit.

The focus, in the law, is on dependency. In other words, the fund looks at who depended on you financially for upkeep, whether because you had a legal duty to support them or because you were in fact supporting them in their everyday life.

NOMINATION OF BENEFICIARIES

Even though your retirement fund benefit does not automatically fall into your estate, it is still very important to complete a beneficiary nomination form.

This form tells the trustees and guides them on who you would like them to consider should you die, and how you would prefer the benefit to be distributed. It gives useful guidance, but it is not the only factor the trustees may consider in the distribution of benefits.

If you die, the trustees will look at your nomination form, but they also have a legal duty to identify your factual and legal dependents before deciding how the benefit should be distributed.

That is why it is important to keep your nomination form up to date. Major life changes such as marriage, divorce, the birth of a child, or the death of a factual beneficiary should be reflected in your records with the fund, so that the trustees have the clearest possible picture of your beneficiaries' situation.

WHAT HAPPENS IF A MEMBER DIES?

When a member dies, the trustees must investigate who qualifies as a dependent (legal and/or factual) and what each person's needs are. This may include a spouse, children, parents or any other person who relied on the member for financial support or upkeep. The trustees must weigh the member's wishes against the facts on the ground and then decide on a fair and equitable distribution of the death benefit.

Dependency is not limited to direct cash payments.

A person may also be financially dependent on you if you regularly support them in other ways for their upkeep, such as regularly paying rent, buying groceries, covering school costs, or helping with medical expenses, among other things. A once-off payment is usually not enough to show dependency. The trustees will look at the full picture of the relationship and the person's living circumstances.

DISTRIBUTION OF MEMBER'S BENEFITS AFTER DEMISE TO DEPENDANTS

When deciding how to distribute a benefit upon the death of a member, trustees generally look at the nature and extent of the support the deceased member provided, as well as the financial needs of each possible beneficiary. This can include factors such as age, health, level of dependence, and the person's ability to support themselves in future. The aim is to reach a fair and equitable outcome based on the real circumstances of each case.

Trustees may consider factors such as:

- the age of each beneficiary;
- their relationship with the deceased member;
- the extent of their financial dependence;
- the member's wishes, as expressed in a nomination form or will; and
- the financial position and future earning capacity of each dependent.

Being identified as a dependent does not automatically guarantee an equal share in the benefit distribution. The trustees must use their discretion to decide what is fair in the circumstances of each case.

THE DIFFERENT KINDS OF RETIREMENT BENEFITS

Depending on your fund's rules, you may qualify for different types of benefits, including:

- **Retirement benefit –** money paid to you when you retire, either as a lump sum, monthly income, or a combination of both.
- **Death benefit –** money paid to qualifying dependents or beneficiaries if you die while still a member of the fund.
- **Disability benefit –** support that may be available if illness or injury leaves you unable to work.
- **Withdrawal benefit –** money that may become payable if you leave your employer before reaching retirement age.

WHAT TO DO IF YOU HAVE A COMPLAINT

If you are unhappy with a decision made by your retirement fund, the first step is usually to raise the complaint in writing directly with the fund, normally through the principal officer. This gives the fund a chance to address the issue internally.

If the matter is not resolved and you still believe you have been treated unfairly, you may then take the complaint to the OFS, attaching the document by which you first raised the issue with the fund.

The OFS considers complaints involving issues such as the way a fund is run, the application of fund rules, the payment of benefits, delays, poor administration, or decisions that may not have been lawful or fair and equitable.

For members, the message is clear: know how your retirement fund works, keep your records up to date and ask a question when something does not seem right. Understanding the basics now can help you avoid confusion later and make it easier to protect the people who may depend on you.

N.B OmbudsDay is a monthly consumer education column compiled by the Office of the Ombudsman of Financial Services of Eswatini.

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