Dashboard

Legal Updates

Edition 1 | February 2024

Legal update

1. The Adjudicator’s draft policy on expedited complaints

> “Expedite” means to make something happen more quickly.

Why is the policy being considered?

Towards the end of 2023, the Office of the Pension Funds Adjudicator issued a draft policy for comment. The “Expedited Complaints and Vulnerable Complainants Policy” is still a draft at this stage.

The policy deals with the identification, process, and training for expediting complaints because of the vulnerable nature of the complainant or subject of the complaint. While all complainants must be dealt with expeditiously, with dignity and fairly and are vulnerable to some degree, some are more vulnerable than others and the Adjudicator wants to expedite the process around these complainants and complaints.

Which complainants and complaints would be seen as vulnerable, thus leading to an expedited complaint?

The Adjudicator has identified guidelines for the types of complaints that may be expedited. This is not a closed list and the Adjudicator’s Office could identify other complaints to be expedited at their discretion.

Complaints may be expedited for the following reasons:

- Older that 65; physically or mentally challenged,
- Seriously ill (life threatening),
- Children who are head of their households,
- In exceptional need of financial assistance and the expeditious resolution of the complaint has the potential to provide such assistance; in need of an outcome from the OPFA to make an important decision that is time sensitive, for example, causal event charges where a complainant is still to decide if the benefit should be made paid up or not, and
- Retirement funds complaining about the non-payment of contributions by a participating employer.

The following complaint types may be expedited:

- Requests for information, including benefits statements, where this is the only issue.
- The withholding of a benefit by a fund for than 12 months since the benefit arose.
- Delays in finalising a section 37C lump sum death benefit distribution, where the member's death occurred more than 24 months before the complaint.

An expedited process

The Adjudicator has proposed an internal process to deal with expedited complaints more quickly. Part of this process is that if a respondent to the complaint (for example, the fund, employer, or administrator) is asked for a response or information, they will have **five working days** to provide the response.

The fund's process

Five working days is a significantly shorter period to respond compared to "normal" complaints. Once the policy becomes final, funds may need to consider amending their complaints process for managing these expedited complaints (drafting, commenting, signing, and submitting) to meet the turnaround time. "Working days" exclude public holidays and weekends.

Complainants who are blind or cannot read or write

A complainant who is blind or who cannot read or write will be assisted by the Adjudicators Office in submitting a complaint in writing.

Complainants who can't understand the language

If there is a language barrier, where possible, the Adjudicator's Office will try to communicate verbally with the complainant in their home language to explain the outcome of the Adjudicator's investigation.

The Adjudicator's Office will also issue correspondence in English for record purposes.

Where possible, the Adjudicator's Office will provide a written translation of the correspondence in the complainant's home language.

The Adjudicator will change the policy and when required, to better service vulnerable complaints.

2. An FSCA assessment: Treating Customers Fairly and Regulation 28 principles

In December 2023, the Financial Conduct Services Authority (FSCA) sent a communication to the Principal Officers of many retirement funds requesting information about transformation in respect of service providers.

Funds were requested to complete the following assessments:

- Treating Customers Fairly (TCF) self-assessment with regards to the implementation of measures to meet the TCF outcomes. TCF is the outcomes based, regulatory and supervisory approach of the FSCA designed to ensure that regulated financial institutions (for example, retirement funds) deliver specific, clearly set out fairness outcomes for financial customers (for example, members). Funds are expected to demonstrate that they have implemented and are delivering the TCF outcomes in the way that they conduct business. This part of the assessment is not new, and many funds would have completed this previously.

- The Regulation 28 principles self-assessment with regards to the implementation of measures to consider in contracting services to a fund or its board.

The assessment had to be returned to the FSCA through its online portal by 31 January 2024.

Why has the Regulation 28 assessment been circulated?

The FSCA is considering the extent to which Regulation 28 principles are embedded within retirement funds.

Regulation 28 provides that retirement funds have a fiduciary duty to act in the best interest of their members, whose benefits depend on the responsible management of assets. This Regulation requires a fund and its board to consider, "in contracting services to the fund or its board, the need to promote broad-based black economic empowerment of those providing services".

Questions in the FSCA's Regulation 28 assessment

- "Does the fund have a procurement policy in place? If so, furnish us with a copy of the policy. If the fund does not have a procurement policy in place, outline the procurement process of the fund.
- When contracting services to the fund and its board, does the fund consider the need to promote broad-based black economic empowerment of entities providing services? (Please explain in detail how the fund meets this condition in the comments section).
- Does the fund request BBB-EE certification from its service providers when contracting services? If so, please furnish us with copies of such certification.
- Does the fund evaluate whether its existing service providers continue to promote broad-based black economic empowerment?
- Do you have a mechanism in place to deal with an existing service provider who no longer complies with the BBB-EE requirements. (Please explain in detail how the fund deals with such a scenario in the comments section.)
- When contracting services to the fund and its board, does the fund consider the need to promote broad-based black economic empowerment of independent trustees providing services if applicable? (Please explain in detail how the fund meets this condition in the comments section and if this is not applicable, please indicate such in the comments)".

The assessment should create a baseline for the FSCA to supervise and regulate the requirements of the Conduct of Financial Institutions Act (once promulgated) and regulatory interventions relevant to the transformation progress of funds.

3. Exemption of large funds from certain prescribed formats when preparing financial statements

The Pension Funds Act (the Act) requires every fund, within six months of the end of every financial year, to provide the prescribed financial statements to the FSCA that have been audited by the auditor of the fund.

From 21 December 2023, the FSCA's RF Notice 26 of 2023 replaces RF Notice 5 of 2020, (the Exemption of Large Funds from certain prescribed formats for preparing financial statements under section 15 of the Pension Funds Act).

"Large Funds" are defined as funds with total assets exceeding R50 000 000.

The RF Notice has been published because the prescribed format of annual financial statements does not align with the amendments to Regulation 28 of the Act.

To ensure alignment with the amendments to Regulation 28, the FSCA is planning to replace the current BN 77 Notice with a Prudential Standard, which is currently in draft format.

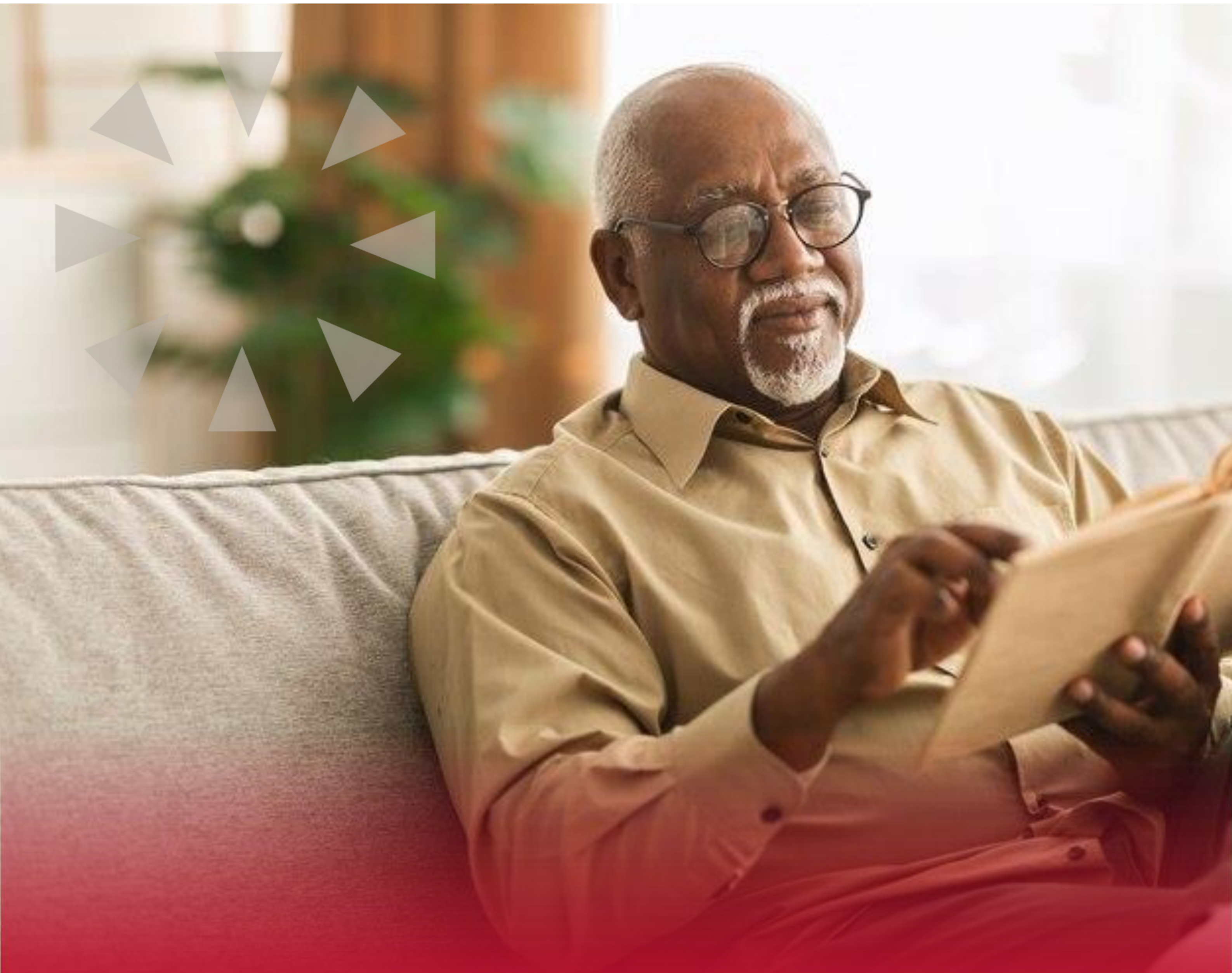
In the interim, to deal with the issue of BN77 not currently aligning with Regulation 28, the FSCA has published exemptions in relation to infrastructure reporting and certain Schedules.

The exemption of large funds from the provisions of section 15 of the Act provides for three scenarios:

- **For the preparation of financial statements in respect of a financial year that ends after 1 March 2018,** a Large Fund is exempted from the requirement to complete Schedule D1 when preparing financial statements but must complete the Independent Regulatory Board of Auditors (IRBA) approved illustrative "Auditor's report template: Audit of the Financial Statements of a Large Retirement Fund (Schedule D)".

- **For the preparation of financial statements in respect of a financial year that ends between 1 March 2018 and 31 December 2022**, a Large Fund is exempted from the requirement to complete Schedule IB1, but must complete IRBA's illustrative "Assurance Report on Compliance with Regulation 28 of the Pension Funds Act" that was approved by IRBA in March 2019; and

- **For the preparation of financial statements in respect of a financial year that ends after 31 December 2022**, a Large Fund is exempted from the requirement to complete Schedule IB1 but must complete Annexure A to the notice "2023 Assurance Report on Compliance with Regulation 28 of the Pension Funds Act".



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