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# Cleaning up the unclaimed benefit industry – the FSB’s unclaimed benefit bugbear

**T**he issues within the broader pension fund industry surrounding unclaimed benefits remain a major bugbear for the Financial Services Board (FSB). As such, the regulator continues to look for ways to drive a paradigm shift that will improve compliance with best practices across the industry.

One of the major challenges that the FSB is attempting to tackle is the perception that insurers and administrators lack incentive to trace beneficiaries and pay out unclaimed benefits because it means benefits can remain in the unclaimed fund for longer, incurring admin and investment fees.

At present, the value of the unclaimed benefits ‘black hole’ across all funds is, according to the FSB, estimated to be in the region of R 20 billion.

The FSB’s information circular (PF No. 4 of 2015) ([www.fsb.co.za](http://www.fsb.co.za), accessed 3-5-2016), advises that the organisation is currently in the process of conducting an audit to quantify the value and gain deeper insight into the state of unclaimed benefits in the industry. The FSB is gathering data from unclaimed benefit funds across the retirement industry and intends to place this data on its website where it will form a repository for members trying to find out if they have unclaimed benefits in a specific fund.

While unclaimed benefits can remain indefinitely in occupational funds, they are classed as ‘unclaimed’ by definition as laid out the Pension Funds Act 24 of 1956 (the Act), as amended, after 24 months. Trustees in occupational funds have a fiduciary duty to trace members before their benefits become defined as unclaimed.

However, if beneficiaries are not found, trustees have a duty to continue to trace them after the 24-month period has lapsed or to then transfer them to an unclaimed benefit fund. These duties are often written into the rules of the occupational funds. Having been left to self-regulate in this regard it seems the industry at large has failed to stick to best practices and fulfil their mandate of ensuring that beneficiaries are traced and paid what is rightfully theirs in a timely manner. This inaction has necessitated tougher regulation from the FSB to enforce compliance, which means that

there are now major changes on the horizon for the industry that will have far-reaching implications.

## Counting the cost of increased regulation

If a fund is registered as an unclaimed benefit preservation fund, the current administrative requirements for a s 14 transfer from an occupational fund to an unclaimed benefit fund are minimal (as outlined in the Act, as amended) – the transferor fund completes a Form H and sends it to the transferee fund, which issues a Form J. Once those two forms are signed they are simply kept on file with both funds and do not need to be sent to the regulatory authority unless requested by the FSB. In my 15 years’ experience, this is something that seldom, if ever, occurs.

While there are admin fees associated with the current s 14 process for elements such as disinvestment and trustee signatures, the costs are minimised because the fees for actuarial and FSB submission are not required in terms of a s 14 transfer.

However, the FSB now plans to take the regulation of these unclaimed benefit funds a step further. In this regard, the FSB has released draft notice no. 2 that pertains to the ‘[w]ithdrawal of exemption from compliance with section 14(1) of the Pensions Fund Act 1956, for transfers of liabilities in respect of unclaimed benefits’ ([www.fsb.co.za](http://www.fsb.co.za), accessed 3-5-2016).

Transfers in terms of s 14(1) of the Act require members to be notified of any transfer and to be given the opportunity to object to the transfer if they feel they are being prejudiced by it.

Due to the nature of unclaimed benefits, it is not possible to notify members of these transfers. The FSB is of the opinion that members who are unable to object to such a transfer are not adequately protected, unless the Registrar is able to approve or deny approval to such a transfer. Therefore, in terms of the draft notice, applications for transfers to unclaimed benefit funds have to be lodged with the FSB before the transfer occurs and only after the FSB’s approval is obtained.

By imposing greater industry regula-

tion on the administrative and reporting requirements for transfers into these funds, the FSB aims to clamp down on administrators that do not act in the best interest of beneficiaries, to ultimately protect fund members, while also helping to quantify the scale of the unclaimed benefit surplus.

While this is admirable in principle, the application of such a decision will have serious implications from both an administrative and, consequently, a cost perspective.

According to the notice, administrators will in future need to submit s 14 transactions to the FSB for approval prior to any actual transfer taking place between funds. This not only adds to the administrative requirements but also attracts greater direct costs because every time a transfer is done a certificate needs to be signed off by the actuaries of both the transferor and the transferee funds, which can cost between R 2 000 – R 4 000 per certificate. This can equate to as much as R 8 000 per transfer in actuarial fees alone. There will also be a fee for submitting the application to the FSB, which is currently R 210 per member and is capped at R 1 020 for six or more members, according to the amendment of sch L to the regulation of the Act.

Furthermore, if administrators choose to do a blanket transfer by leaving the application open-ended and transferring members over a period of time, then a cost of R 4 100 will be levied by the FSB to review the application.

With these associated costs umbrella funds could be particularly hard hit from a cost perspective, depending on the rules of the fund.

According to the new regulations as outlined in draft notice no. 2, each participating employer will need to submit a s 14 application for its unclaimed members. As participating employers in an umbrella fund generally have fewer members, transfers are normally made for only one or two people at a time. If the rules of the umbrella fund state that unclaimed benefits have to be transferred as they become unclaimed, this may result in the need to do multiple transfers of one or two members at a time.

Another issue requiring attention is that many of the unclaimed benefits are small – under R 5 000 – and the process

of finding someone is slow, and a successful trace is not guaranteed.

The industry's base cost to trace someone is approximately R 400. Administrators also charge up to R 40 per month per member to manage funds, and up to R 300 to affect a payment. The charging of asset-based fees, in addition to the flat rand fees, is also common. These admin costs can therefore quickly erode these small benefits.

In addition, most unclaimed benefits are invested in conservative portfolios where it is more likely that the capital value will be preserved. However, this results in lower investment returns due to the lower risk profiles of these investments.

This not only prevents the benefit from keeping up with inflation, it also effectively means that the fees and costs are not being offset by the returns, and

that the benefit is ultimately being whittled away, which is counter to the aim of these proposed amendments.

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