Allocation of death benefits – quo vadis?

Section 37C(1) of the Pension Funds Act states that regardless of the provisions of a law or the rules of a registered fund, a benefit payable on the death of a member does not automatically fall into the member’s estate; it must be dealt with in terms of that section of the Act.

For example, where a deceased member is survived by dependants and nominees, the board of trustees of the fund must distribute the death benefits fairly and equitably between them. The board must decide in what proportions the benefit must be paid - the board is not compelled to award an amount to each dependant and nominee.

The challenge for trustees starts with identifying and tracking qualifying dependants and nominees. Almost 90% of participating respondents in the 2017 Benchmark Survey indicated that these were the main factors causing delays in the allocation of death benefits. Needless to say, the duty of a board to trace all potential beneficiaries and then to make an equitable distribution is not an easy one to fulfil. Consequently 54% of respondents in the 2017 Benchmark Survey indicated that they first made a provisional or preliminary decision and gave potential beneficiaries the opportunity to provide input, before the board made a final decision on allocating the death benefit.

Once the dependants and nominees of a deceased member have been identified, the financial position and other circumstances of each must be considered by the board. The Act does not specify what factors the board should consider in deciding an equitable distribution. However, the Pension Funds Adjudicator has consistently held that in exercising an equitable distribution, the board needs to consider a wide range of factors, including:

- The actual wishes of the deceased;
- the financial status of each beneficiary;
- the future earnings capacity of each beneficiary;
- the extent of their dependency;
- the ages of the beneficiaries;
- the relationship with the deceased; and
- the amount available for distribution.

In the 2017 Benchmark Survey, it was found that:

- in 81% of cases, the trustees took the wishes of the deceased into account;
- in 95% of cases, the trustees took the extent of dependency into account;
- in 93% of cases, the trustees took the ages of the beneficiaries into account;
- in 83% of cases, the trustees took the relationship with the deceased into account; and
- in 60% of cases, the trustees took the amount available for distribution into account.

It is important to note that no single factor may be over-emphasised to the total exclusion of the others.
In the case of Dobie NO v National Technikon Retirement Pension Fund, the Pension Funds Adjudicator commented as follows:

“One thing is certain about section 37C, it is a hazardous, technical minefield [...] potentially extremely prejudicial to both those who are expected to apply it and to those intended to benefit from its provisions. It creates anomalies and uncertainties, rendering it most difficult to apply. There can be no doubt about its noble and worthy policy intentions... By imposing a duty on the board to trace dependants the section advances such persons' interest. However, there is legitimate concern about the practical difficulties of tracing such dependants. One solution may be for the section to identify more precisely the steps required to be taken, including an appropriate form of publication, and then allowing for a final distribution to known dependants and nominees at the expiry of a reasonable period culminating in indemnification of the board against further claims.”

It is therefore not surprising that in the 2017 Benchmark Survey, half of the respondents indicated that section 37C does not provide sufficient guidance to boards as to what is required of them in order to come to a decision on allocating a death benefit.

Perhaps the time has come to revamp section 37C, not only to make the task of boards easier, but also to provide more clarity to members early on as to how the benefit payable upon their death will be applied.