

UNIVERSITY OF KWAZULU-NATAL

The Impact of the Decisions of Pension Fund Trustees on Socio-
Economic Welfare of Beneficiaries

By

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DECLARATION

I, MMOKENG RODNEY MAKINA, hereby declare that the dissertation, with the exception of where otherwise indicated is my original research work and I further declare that it has not been submitted for any degree or examination at any other university.

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Date

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ABSTRACT

The aim of this study was to find out the reasons why most of the time the decisions taken by the trustees are challenged by beneficiaries at the Office of the Pension Funds Adjudicator. Secondly, to engage with the sitting trustees in order to understand what they go through when discharging their duties and their thinking about the impact of their decisions on the socio-economic welfare of the beneficiaries. The focus of this study was confined to the nature of interaction between beneficiaries of pension funds living in the Greater Tubatse municipal area and trustees, services available to former members of the retirement funds found in the Greater Tubatse municipal area. Qualitative research methods in the form of interviewer-administered questionnaires were used for data collection. The sample size consisted of five widows, four retired members, a focus group consisting of four sitting pension fund trustees from Greater Tubatse municipal area, and one official from the Office of the Pension Funds Adjudicator. Only persons who reflected the appropriate characteristics of the sample members were chosen. Non-probability sampling was utilised to select the sample members. The study revealed a poor service being rendered by trustees to beneficiaries, disgruntled retired members of pension funds, as well as the difficulties and challenges under which trustees operate. Lastly, the most common matters referred to the Office of the Pension Funds Adjudicator for intervention, and what is considered to be the weakness of trustees. Among others it can be recommended as follows: that the Office of the Pension Funds Adjudicator be decentralised to be accessible to rural communities, regulation of support given to trustees to ensure uniformity, professionalisation of trusteeship, there should be consequences for trustees who ignore their duties, and educating members whilst still employed and the beneficiaries about the process of claiming death benefits.

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LIST OF ACCRONYMS

COSATU:	Congress of South African Trade Unions.
CCPPWAWU:	Chemical, Energy, Paper, Printing, Wood and Allied Workers Union.
CWIU:	Chemical Workers Industrial Union.
FEDUSA:	Federation of Unions of South Africa.
FSB:	Financial Services Board.
GEPF:	Government Employees Pension Fund.
MWASA:	Media Workers Association of South Africa.
NUM:	National Union of South Africa.
NUMSA:	National Union of Metal Workers of South Africa.
OPFA:	Office of the Pension Funds Adjudicator.
PFA:	Pension Funds Adjudicator.
RDP:	Reconstruction and Development Programme.
SAMANCOR:	South African Manganese Corporation.
SAPA:	South African Press Association.
SAQA:	South African Qualifications Authority.
UNIVEN:	University of Venda

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CHAPTER 1

OVERVIEW OF THE STUDY

1.1 Introduction

Historically in South Africa, pension was for the sole benefit of the white employees. With slow political reforms black employees also became beneficiaries of pension funds. It was not until the early 80s that with the involvement of trade unions in South Africa that represented mainly black workers in the administration of pension funds, that the retirement industry became a contested business with numerous stakeholders. The retirement industry is regulated by Pension Funds Act No. 24 of 1956 and by oversight institutions like the Office of the Pension Funds Adjudicator (OPFA) and Financial Services Board (FSB).

Literature and research on the nature of contestation of the pensions, in particular the decisions of the trustees, has been on-going as has identifying the sources of the contestation and making recommendations for resolving the contestation. However, much has not been done to find out the impact of the decisions of the pension fund trustees on the socio-economic welfare of beneficiaries in South Africa, especially when distributing death benefits as prescribed by Section 37C of the Pension Funds Act 24 of 1956, and the investment decisions or choices of trustees which has the potential to shape the socio-economic welfare of beneficiaries. This study was aimed at determining the impact of the decisions of the pension funds trustees on the socio-economic welfare of beneficiaries.

1.2 Motivation for the Study

The need for this research arose from the fact that there are disputes most of the time after the trustees of pension funds have discharged or are in the process of discharging their duty of distributing the pension benefits or death benefits to beneficiaries. Furthermore, it appears that the disputes are informed by the concerns of the beneficiaries, whose socio-economic welfare could be changing for good or bad going forward with life without their breadwinners.

Literature and newspaper articles point to poor decision making by trustees when tracing and identifying dependents in line with the requirements set by section 37C of the Act, examples being Maphanga Mampoto Emily vs. Anglo Platinum Group Provident Fund, Case number PFA/MP/1425/2004 and Komana Napogadi Mirriam vs. Samancor Group Provident Fund, Case number PFA/MP/4828/2005/LM/th. Both matters emanated from poor decision making by trustees, when executing section 37C responsibilities. Literature also pointed to lost pension money that emanated from poor investment decision making by trustees on behalf one beneficiaries. Examples are the Mine Workers Provident Fund's investment with Fidentia Asset Management (Pty) Ltd in association with Living Hands Umbrella Trust (FSB Bulletin 2008:14). In addition, Hunter (2013: 9) stated that a fund must have an investment policy statement, which must be reviewed at least annually.

Evidence exists that indicates cases whereby some members challenged the decisions of the fund administrators through the OPFA, and won the case and received their benefits. For instance, in the complaint of Maphanga Mampoto Emily vs. Anglo Platinum Group Provident Fund, Case number PFA/MP/1425/2004 the contested issue was the distribution of the death benefit. At the time the fund member joined the Provident fund, he was single, and as such nominated two children of his sisters as the beneficiaries and their mothers. They were still learners then and not yet working.

In the complaint of Komana Napogadi Mirriam vs. Samancor Group Provident Fund, Case number PFA/MP/4828/2005/LM/th: the trustees refused to recognise the complainant as the second wife and dependant of the deceased. In addition, the trustees did not allocate any financial benefit to the children the deceased had with the complainant

During a presentation to Pension Funds Lawyers at Misty Hills, Johannesburg on 05 March 2013, Nevondwe indicated that trustees are confronted with many difficult decisions on a regular basis and are required to have knowledge and understanding of the legal framework in which they operate as well as the rights of the members under that particular legal framework. This was one the reasons the

researcher needed find out more about the impact of such difficult decisions on the socio-economic welfare of beneficiaries.

It further appeared that some of the legitimate beneficiaries were not or may not be benefiting due to, among other things, the failure of the board of trustees to execute their mandatory duties for some reasons known to the trustees. The *Sowetan* article titled "Widow in pension dispute with nyatsi" by Thuli Zungu dated 26 January 2015, p17 reported on a widow who was in a pension dispute with a *nyatsi* (concubine, Northern Sotho).

The girlfriend was contesting to be the sole beneficiary of death benefits. It further emerged that prior to the death of the fund member, the "*nyatsi*" had fraudulently nominated herself as the sole beneficiary to receive all death benefits in the event of the fund member's death. The "*nyatsi*" was dismissive of the claims that she fraudulently nominated herself as the sole beneficiary, arguing that she followed the deceased member's instructions when completing the form nominating herself as the sole beneficiary.

Research has indicated that in recent years there has been a marked increase in the number of cases referred to the PFA for determination, which have emanated from the application of section 37C, which regulates the distribution of death benefits to the identified dependants or nominees of a deceased pension fund member (David, 2012:5). The findings of this study may be used for policy and processes review by various pension funds trustees and other statutory bodies entrusted with overseeing the administration of pension funds for the benefit of fund members and their beneficiaries.

1.3 Context of the study

As an indication that decisions of trustees have the potential of having a negative impact on the socio-economic welfare of pension funds beneficiaries, a study was conducted in Accra, Ghana. Kutsoai and Morck (2012) when there was a need understand the living conditions of surviving widows and orphans prior to and after the death of their husbands or breadwinners. In order to clearly understand the

impact of the decisions of trustees on the socio-economic welfare of beneficiaries, there is need to conduct the research on the impact of the decisions of the pension funds trustees on the socio-economic welfare of beneficiaries. The likelihood is that a similar situation may exist at the Greater Tubatse Municipal area given that there were two complaints that were referred to the OPFA for adjudication (Maphanga Mampoto Emily versus Anglo Group Provident Fund and Komana Napogadi Mirriam versus Samancor Group Provident Fund).

Pensions are said to be positively linked to elderly pensioners' health. Lloyd-Sherlock and Agrawal (2014:1571) state that by meeting older people's economic needs, pensions are an effective means which seek to enhance other aspects of their well-being, including their health status. Lloyd-Sherlock and Agrawal (2014:1572) further stated that a number of studies have been conducted in South Africa in the Langeberg Health District in the Western Cape, and they indicate that pensions can have a significant effect on older people's health status, suggesting that wrong investment decisions are likely to cause health problems to the elderly.

Whilst acknowledging the rights of beneficiaries, Chowdhury (2014:389) indicated that trustees are under no obligation to give reasons to the beneficiaries or explain to them why they have taken a particular decision. It is probably against this background that trustees in South Africa, may be of the view that they do not owe any explanation to the beneficiaries on how a certain decision had been arrived at regarding payment or non-payment of death benefits due for distribution. However, the trustees at the end find themselves having to explain their decisions to the beneficiaries through the OPFA.

Waitzer & Sarro (2013:32) acknowledged that in a fiduciary relationship, ultimate decision-making authority must rest with the fiduciary alone, Waitzer & Sarro (2013:32) further stated that this does not mean that a fiduciary cannot consult with beneficiaries as part of its decision-making process, and therefore, called for a statutory "duty to consult" plan of members before trustees take actions that affect members' interests.

However, Chowdhury (2015:387) indicated that section 1 of the Trustee Act 1925 restricts trustees' powers of investment to safe investments. However, the Trustee Investment Act of 1961 extended the trustees' power of investment in shares, but still the investment power was restricted, in order to protect the beneficiaries from the trustee losing the trust fund in risky investment. In the South African context, one such example of investments that nearly went wrong was the partial collapse of African Bank, in which the Public Investment Corporation, which is the investment wing of the Government Employees Pension Fund (GEPF), invested the monies of government employees.

Nevondwe & Odeku (2014:773) concluded as follows: "Section 37C expects the board to exercise its discretion in a manner which would result in an equitable distribution of the death benefit notwithstanding that it does not provide any guidelines as to how this is to be achieved". Therefore, it is probably because of this absence of guidelines that certain decisions of trustees are vulnerable to challenges by aggrieved beneficiaries through the OPFA. The nature of many complaints lodged showed an increasing tendency amongst many South Africans living under cohabitation situations and the so-called "*vat and sit*" relationship.

According to Marumoagae (2012:5) section 7D(c) of the Pension Funds Act, 24 of 1956, indicated that the duties of a board is to provide sufficient and reliable information to members of the fund informing them about their rights, benefits and duties in terms of the rules of the fund. Through this research, it will be clear whether road shows and awareness campaigns are being conducted by the boards.

Nevondwe further states that member rights have been explicitly outlined in the various sections of the Pension Funds Act, 24 of 1956, whereby the Act places a duty on the trustees to inform members of their rights, benefits and duties in terms of the rules of the fund, and that the core of the members' rights lies with the governance of the fund. While the trustee may have legal title to the trust fund, real entitlements rest with the beneficiaries, and that trustees have a duty to act even-handedly towards the different classes of beneficiary. It is the duty of the trustees

to provide information to the beneficiary, and it is also the right of the beneficiary to see the trust document.

As much as Chowdhury (2015:389) states that trustees are under no obligation to explain themselves to the beneficiaries regarding what informed the decisions they have taken. To some extent, it is for the same reason that boards of trustees find their decisions being challenged by beneficiaries through intervention by the OPFA or the FSB; hence, the need to embark on this research to explore and understand the implications of the decisions of the trustees on the socio-economic welfare of beneficiaries. The number of complaints against the decisions of trustees may be an indication that decisions of trustees bring undesirable consequences to the beneficiaries.

Mhango (2014:105) stated that the OPFA has created a forum allowing unrepresented litigants to challenge decisions of the pension fund organisations and employers who participate in them, which they otherwise could not pursue in ordinary courts due to the high cost of legal services in South Africa. In the United States of America, the oversight structure that monitors the performance of pension funds or retirement funds trustees is called The Employee Retirement Income Security Act (Diaz, 2014:2).

According to Nevondwe & Odeku (2013:818) the OPFA is a specialist tribunal that aspires to be a respected institution which makes binding and final determinations in pension fund complaints submitted to it in terms of the Act. It is further stated that OPFA resolves complaints in terms of the Act in order to uphold the integrity of the pension fund industry and to protect the interests of the pension fund members (Nevondwe & Odeku: 2013:818). The OPFA Annual Report (2013/14:6) indicates that the office received 5405 new complaints, which represents an increase of 4.7% on the previous period, and 6643 complaints were finalised, representing a decrease of 22.3% on the previous period.

The *Sowetan* article titled “Laziness at pension’s agency blamed for payment delays” by Thuli Zungu dated 04 March 2015, p19 reported a situation in which a retired Limpopo advocate accused the Government Pension Administration

Agency of failing to process her pension pay-out since she had left the public service in March 2014. The same *Sowetan* also reported on p19 about a Giyani based widow and her two children who had been living in abject poverty for the past 14 years, yet they had almost R500 000.00 sitting in government coffers in the GEPF.

This research seeks to find out how situations like this impact on the socio-economic welfare of the beneficiaries concerned.

The OPFA Annual Report (2013/2014:12) points to another contested allocation of death benefits by the board of trustees, whereby at the end of considering all the facts presented by the complainant and the respondent, the PFA ordered the allocation of the death benefit by the board of the first respondent to be set aside. Again, the OPFA ruled that death benefit allocations be set aside in two separate matters that came before it and ordered that thorough investigations be carried out into the circumstances of all potential beneficiaries (OPFA Annual Report 2013/2014:17)

When the member's personal circumstances changed, he did not update his nomination form of beneficiaries. Later his sisters got jobs and had working husbands who supported them and their children. Following the fund member's death, the trustees allocated financial benefits to the children of his sisters.

The complainant, wife of the deceased challenged this decision as she felt that the trustees had failed to investigate that the personal circumstances of the sisters of the deceased had changed, and as a result their children were no longer dependent on her late husband, and that such a decision was disadvantaging her children financially compared to the children of the deceased's sisters who have both parents working and providing for them, compared to her children who lost their breadwinner. Also that she was not employed compared to the sisters of the deceased who had jobs. The complainant further argued that the children of the deceased's sisters stood a chance to benefit three times more than her children, as they would also benefit from the pension funds of their biological parents.

The PFA ruled in favour of the complainant on the basis that the trustees had failed to investigate and could not prove that the children of the deceased's sisters were no longer dependent on the deceased prior to his death. The allocations to the sisters' children were redistributed to the children of the deceased.

The fund member had a wife with whom he was married in civil marriage, and was also married to the complainant through customary marriage. Documentary proof from the local traditional authority and from both families existed to acknowledge the marital relations between the deceased and the complainant.

When allocating the benefits, the trustees failed to investigate and trace all the legitimate beneficiaries. Further, the trustees refused to acknowledge the deceased's customary marriage and his children with the complainant. The complainant argued that the trustees did not have the jurisdiction to question and adjudicate on the status of her marriage, as this is the competence of the Department of Home Affairs. In addition, she argued that in refusing to acknowledge her and her children as the beneficiaries of the deceased, the trustees were violating a statutory prescript that governs the distribution of pension death benefits. In addition to that the deceased at the time of his death was staying in the same household with the complainant and her children.

The above complaints as referred to the OPFA suggest the existence of either flaws, lack of rationality in decision making or negligence by trustees when discharging their duties. Furthermore, these complaints may suggest that beneficiaries of death benefits as defined by the Pension Funds Act, Section 37c, are not benefiting from their breadwinners' pension benefits, which are meant for distribution by Boards of Trustees.

In another complaint as indicated on the OPFA Annual Report (2013/2014:25), one pension board was slammed by the PFA for ignoring registered rules when computing a withdrawal benefit. The board of the Municipal Employees Pension Fund used an amended rule yet to be approved, instead of abiding by an existing approved rule. Furthermore, it appeared that the OPFA was the saviour of many

beneficiaries, because it offers free service to the beneficiaries, which enables the beneficiaries to test some of the decisions of trustees.

Although evidence exists as seen in *New Age* (Free State) article by Tshimologo Leeuw titled “*PFA concludes ‘successful’ road show*”, 19 February 2015, p3 indicated that the OPFA conducted a successful road show in Bloemfontein, it is yet to be known what the geographical coverage of such “Road Shows” and the extent to which beneficiaries were aware of the existence and the kind of assistance that can be sourced from the OPFA.

Nevondwe (2013:7) stated that boards of trustees have an obligation of making sure that relevant and sufficient information is being communicated to the members of the fund informing them about their rights, benefits and duties in terms of the rules of the fund. Another obligation the trustees have is to ensure that employers are paying contributions to funds on time.

However, according to Lamola (2014:1), 60% of the complaints coming to the OPFA come from private security companies, which is an indication that trustees in the Private Security Regulatory Authority are failing to discharge the duty of taking all the necessary steps to ensure that employers in the Private Security Industry pay contributions on time without failure to the fund in favour of their employees. Lamola (2014) further indicates that members of security companies discover on their own that they are not properly covered. This is another indication that trustees in the private security industry are not communicating with their members.

1.4 Study Focus

The study focused on the challenges and experiences of pension fund beneficiaries, in particular widows and former members living within the Greater Tubatse municipal area emanating from their interaction with trustees of pension funds operating in the Greater Tubatse municipal area. Secondly, to hear the side of the pension fund trustees about their experiences and challenges when interacting with beneficiaries, and the nature of the environment in which they

operate. Thirdly, to find out from the OPFA how accessible the office is to people living in Greater Tubatse Municipal area, and which is considered to be the weakness of trustees when executing duties related to section 37C of the Act. Finally, the study focused on the most the most common complaints reported at the OPFA.

1.5 Problem Statement

The number of complaints, past and present referred to the OPFA , as reflected in the OPFA's Annual Report 2013/14 by beneficiaries for intervention against the decisions of the trustees, and other complaints alluded to in the print media (newspapers), point to the existence of decision-making problems by trustees when discharging their duties to the disadvantage of beneficiaries.

Furthermore, it appeared that some of the beneficiaries only became aware of the existence of trustees after the passing of their breadwinner, which is an indication of the likelihood that these beneficiaries may as well not be aware of the role and responsibilities of trustees. In the end, it is these same trustees who determine the financial benefits of the beneficiaries due to loss of a breadwinner, and invest monies on behalf on beneficiaries.

1.6 Study Objectives

For the purpose of addressing the research question the following study objectives have been set:

- To determine the impact of the decision-making by trustees on the socio-economic welfare of beneficiaries who have to rely on pension pay-outs or death benefits.
- To find out the challenges facing beneficiaries and their experience of dealing with trustees: in other words, surviving spouses and retired members.
- To find out the nature of changes in lifestyle of widows before versus after losing their breadwinners.

- To find out the most common complaints received by the OPFA and how the OPFA interacts with society at large.

The formulation of the research question and objectives was informed by the nature of complaints referred to the OPFA by beneficiaries and possible beneficiaries to the OPFA for review, and the continuous review and monitoring of the investment activities of retirement funds in South Africa by the FSB.

1.7 Research questions

- What is the impact of the trustees' decisions on the socio-economic welfare of pension funds' beneficiaries in the Greater Tlhatse Municipal area?
- How aware are beneficiaries of pension funds of the duties of trustees?
- Where do the beneficiaries of funds seek help in the event of a dispute with trustees?
- What are the challenges facing beneficiaries of pension funds?

1.8 Study Limitations

The main limitation to this study was the time frame in which the study was conducted. The researcher had eighteen months to conclude the study. The cut-off time to complete this project was eighteen months. The limitations were as follows:

- The target population of the focus group was supposed to be fully conversant in matters related to the distribution of pension death benefits and the investment affairs in retirement funds. To mitigate this challenge the researcher removed topics related to trustees' duty to invest funds on behalf of beneficiaries. However, the researcher did ask the focus group for an opinion on some of the failed pension fund investments. There was a consensual response which was recorded in topic 17.
- The literature review needed to be enriched with information contained in the FSB report on an investment flop of retirement funds by COSATU's investment arm, Kopano Ke Maatla. The researcher made a formal request

to access the report from the FSB without success. The intention was to do a comparable study with the failed Mine Workers' Provident Fund to draw similarities and differences that would have assisted the researcher to determine the weaknesses of trustees if any. To mitigate the risk the researcher did not speculate on what could have gone wrong on the side of trustees.

These constraints did not have any adverse impact on the conclusion of this study.

1.9 Structure of the Study

The study was planned in such a way that it provides a logical flow to the research process undertaken. The study is structured in five chapters mentioned below:

Chapter One: Provides the introduction to the research problem, the study motivation, the study focus and the research question and sub-questions which prompted the study. Study objectives and constraints are also highlighted.

Chapter Two: Focuses on the emerging issues from the literature review, derived mainly from South African and international literature on pension fund matters affecting fund beneficiaries. The main literature focused on the history of pension in South Africa, pension fund stakeholders, definition of fund dependents, retirement funds' regulations, appointment and qualifying criteria for trustees, trade unions' involvement challenges and the fiduciary duties of the trustees. The implications were discussed in the South African context.

Chapter Three: Addresses the various research methods utilised in this study together with the logic behind why those methods have been chosen.

Chapter Four: Deals with the presentation of the research findings, their interpretation and discussion. The chapter has been divided into five phases. Phase one covers the brief overview of Section 37C of the Pension Funds Act, 24 of 1956 and two case studies pertaining to contested decisions of trustees with regard to the allocation of death benefits. Phase two provides responses to

questions by surviving spouses. Phase three provides responses to questions by retired members. Phase four provides consensual responses to topics by trustees, and phase five responses to questions by officials of the OPFA. The findings of this study were discussed with specific reference to the relevant emerging issues from the literature review and the applicable study objectives.

Chapter Five: The final chapter of this study deals with the conclusions and recommendations drawn from the findings in Chapter Four. The chapter provides suggestions for further research on the problem facing beneficiaries and its impact on their socio-economic welfare.

1.10 Summary

This chapter introduced the research on challenges facing pension fund beneficiaries or dependents when trustees are discharging their Section 37C responsibility of the Pension Funds Act, 24 of 1956, and how investment decisions of funds trustees affect the future financial income of minor dependents by focusing on relevant case studies. The chapter also outlined the nature of the research together with the direction that was followed in this research. The problem statement was formulated together with the sub-problems, the study objectives, as well as the research questions and constraints to this study. The next chapter covers issues emerging from the literature review.

CHAPTER 2

PENSION FUND IN THE LITERATURE

2.1 Introduction

The composition and administration of retirement funds in South Africa and abroad resulted in the formation of a contested relationship between employers and organised labour on how best to manage and administer these retirement funds for the benefit of workers after retirement, and their beneficiaries in the event of the worker's death. In South Africa this relationship is regulated by Pension Funds Act, 24 of 1956 and FSB directives and regulations. Whereas, the OPFA plays an oversight role in situations whereby beneficiaries are not satisfied with the manner in which the board of trustees has distributed the death benefits to dependents, whether legal or factual dependents. The duties of trustees are not limited to distribution of death benefits; one critical task is to seek investment opportunities for the fund. The two duties of trustees are the core to this study, because the aim of the study was to find out the impact of the decisions of pension fund trustees on socio-economic welfare of beneficiaries.

2.2 Definition of key concepts

2.2.1 Beneficiary can be defined as a person receives money or property from someone else who has died (Mayor et al, 2009 142).

2.2.2 Pension fund can be defined as any association of persons established with the objective of providing annuities or lump sum payments for members or former members of such associations upon reaching their retirement dates or for the dependents of such members or former members upon the death of such members or former members (George and Joubert 2007:309).

2.2.3 Trade union can be defined as any organisation whose membership consists of employees, seeks to organise and represent their interests in the

workplace and seeks to regulate the employment relationship through the direct process of collective bargaining with management (Daud and Tumin: 2013:125).

2.2.4 According to FSB document titled “Role of Trustees” p7 *trustee* can be defined as a member of at least four individuals which holds or manages and invests assets for the benefit of retirement fund members.

2.3 Historical background of pension

The earliest record of pension provision in South Africa dates back to 1837 when pensions were paid by the British government of the time to some of their military staff (George & Joubert, 2007:309). It is further stated that pension funds perform an important role within the economy, in the sense that they enable their members to make provision for old age and provide large sums of money for investment in various asset classes (George & Joubert, 2007:307).

George and Joubert (2007:308) identify the three pillars of a retirement funding system: the first being public benefit programme funded from the general government revenue and aimed at redistribution; second is mandatory savings, like company sponsored retirement funds, with voluntary savings as the third. However, for the purpose of this study the focus shall be limited to the second pillar, being the mandatory savings or company sponsored retirement funds.

2.4 Retirement fund stakeholders

George and Joubert (2007:307) identify the following as stakeholders in the pension fund industry:

- Existing members or former members;
- Dependents of former members;
- Trustees;
- Trade unions;
- Government;
- Financial Services Board; and
- Pension Funds Adjudicator.

For the purposes of this study the focus was on existing members, former members, trustees and Pension Funds Adjudicator. According to Elias, Cavana and Jackson (2000:175) a stakeholder is an individual who can affect or is affected by the achievement of the organisational goals. The interests of these identified stakeholders are described below.

2.4.1. Members or former members as stakeholders

In the context of this study, members of a pension fund are those contributing financially to the fund, by virtue of being employees of a particular employer who is also subscribing to the retirement fund in favour of his or her employees, whereas former members are those who exited the retirement fund through retirement or death. It is common sense that most employees are working and affiliated to retirement funds for the purpose of saving money, which act will sustain their socio-economic welfare and that of their dependents when they cannot work anymore.

This expectation in turn informs what their expectations will be in terms of their association with their retirement fund. The expectations of these members are also supported by the Pension Funds Act, 24 Of 1956, which places a duty on the trustees to keep members of a fund informed all the time (Nevondwe, 2013:3).

2.4.2. Dependents of former members as stakeholders

Mhango (2010:186) stated that a dependent relative to fund members refers to:

- (a) a person in respect of whom the member is legally liable for maintenance.
- (b) a person in respect of whom a member is not legally liable for maintenance, if such person:
 - “was, in the opinion of the Board, upon the death of the member in fact dependent on the member for maintenance;
 - is the spouse of the member;

- is a child of the member, including a posthumous child, an adopted child and an illegitimate child;
- a person in respect of whom the member would have become legally liable for maintenance, had the member not died”.

Mhango (2008) 20 SA Merc LJ 126-135 indicated that the governing legislation of pension schemes created three categories of dependents: with legal dependents as the first, factual dependents as the second and a future dependent as the third. Legal dependents refer to a person whom the member of the retirement fund is legally liable to maintain due to legal obligation. These dependents may be inclusive of spouse and children who rely on the member for maintenance; however, according to Nevondwe (2010:40) the onus rests on the person to produce evidence that the deceased had a legal obligation to maintain him / her.

Nevondwe (2010:41) stated that factual dependents refer to any person who was not legally dependent on the deceased for maintenance. But, such a person may still be a dependent if the deceased in some way contributed to the maintenance of that person. Section 1 (b) (ii) addresses the issue of the spouses in respect of whom there exists no statutory law in terms of which the marriage or union is recognised (Nevondwe, 2010:41). An example of such spouses refers to those married in customary marriages.

Future dependents refer to those individuals whom the deceased member of a fund had no legal obligation to maintain at the time of his / her death, but such a person can prove that the deceased would have become liable to maintain had he not died. Therefore, such a person may qualify as a dependent (Nevondwe, 2010:41).

Lastly, this category also includes spouses in a cohabitation situation; Nevondwe (2010:41) cohabitation is found in situations whereby two persons who are not married stay together as spouses.

2.4.3. Trustees as stakeholders

According to Marumoagae (2012:556) the board of trustees refers to the body that manages and controls the fund, which operates independently of the employer, members and all other stakeholders. Furthermore, the board should carry out its duties as required by the rules of the fund and the Act (Marumoagae, 2012:556). As pointed out by Makhubela (2015:1) management and governance of funds rely mainly on the system of trustees.

It is further stated by Marumoagae (2012:556) that the board should not be established to rubber stamp the wishes of either the employer contributing to the fund or the members of the fund, but, the board should be in a position to manage the affairs of the fund in a manner that advances the interests of the fund. This can be said to be true in the sense that in some instances, the wishes of members of the fund are contrary to requirements set by the Act, in particular Section 37C, which relates to the distribution of death benefits in the event of a death of the member of the fund.

Whilst acknowledging the rights of the beneficiaries; Chowdhury (2014:389) supported the notion of trustees being under no obligation to give reasons to the beneficiaries for having taken a certain decision. It is probably against this background that trustees in South Africa, may be of the view that they do not owe any explanation to the beneficiaries on how a certain decision had been arrived at regarding payment or non-payment of death benefits due for distribution. However, the trustees in the end find themselves having to explain their decisions to the beneficiaries through the Office of the Pension Funds Adjudicator.

Whilst acknowledging that in a fiduciary relationship, the ultimate decision-making authority should rest with the trustees alone, Waiter and Sarro (2013:32) stated that it does not mean that a fiduciary cannot consult with beneficiaries as part of its decision-making process, and for that reason, makes an appeal to legislate “duty to consult” fund members before trustees take actions that affect members’ interests.

2.4.4. Trade Unions as stakeholders

Webster indicated during a presentation on slide 4, topic: *“Trade Unions and Retirement Funds”* under the theme *“Pension Power”* on day 1 of the 20th Annual Pension Lawyers Conference in Johannesburg on 02 March 2015 that the interest of trade unions in retirement funds in South Africa can be traced back to 1983 when MAWU (forerunner of National Union of Metal Workers of South Africa, NUMSA) won the right to sit on the Pension Fund, and in 1987 Chemical Workers Industrial Union (CWIU) won the right to co-manage the Chemical Industries Pension Fund. Webster mentioned at the Pension Lawyers Conference, which was held in Johannesburg on 02 March 2015 that the idea grew that union trustees should influence funds to invest in socially responsible ways, like housing for their members.

This approach by unions for retirement funds to invest in housing development indicates that the welfare of members after retirement and the welfare of their beneficiaries are very important because housing is a basic social need; hence even the South African government is providing free housing in the form of what is today known as RDP houses (Reconstruction and Development).

2.4.5. Government as stakeholder

According to National Treasury discussion paper *“Retirement Fund Reform”* (2004:4) government seeks the following:

- To ensure that retirement funding arrangements are cost-effective, prudently managed, transparent and fair
- Improve standards of fund governance, including trustee knowledge and conduct, protection of member’s interest, accountability, and disclosure of material information to members and contributors
- Encourage individuals to provide adequately for their own retirement and the needs of their dependents.
- Encourage employers and employees to provide for retirement funding as part of the remuneration contract.

The ultimate goal is to ensure that other role players in the retirement industry do not behave as they please and ignore the interests of those that they are meant to serve. The government is quite aware that should something go wrong in the pension fund industry, the burden to provide social grants will increase on its part.

2.4.6. Financial Services Board as stakeholder

The Financial Services Board's mandate is to promote and maintain a sound financial investment environment in South Africa (FSB Annual Report, 2013:7). It is further stated that the task of the FSB is to ensure that regulated entities demonstrate delivery of clearly articulated fairness outcomes to financial services customers through its Treating Customers Fairly (TCF) regulatory and supervisory framework. In addition, the FSB promotes financial education and literacy programmes which are aimed at consumers (FSB Annual Report, 2013:7)

These programmes work with financial services institutions to inform and educate users about different financial products as well as their rights and responsibilities. It is against this background that the FSB uses among others, periodical Circulars to communicate regarding retirement funds and other role players in the pension funds industry, like Circular PF 130, as supplemented by Annexure B to Circular PF 130 and Circular PF 98. The former gives guidance on good governance guidelines to an investment policy statement.

2.4.7. Pension Funds Adjudicator as stakeholder

Section 30B of the Pension Funds Act, 24 of 1956 confirmed the establishment of the OPFA. Section 30D indicated that the adjudicator's main object shall be to dispose of complaints lodged in terms of section 30A of this Act in a procedural fair, economical and expeditious manner.

According to Nevondwe and Odeku (2013:818) PFA is "as a specialist tribunal that aspires to be a respected institution, that makes binding and final determinations in pension fund complaints submitted in terms of the Pension Funds Act, and resolves complaints in terms of the Act to uphold the integrity of the pension fund

industry and to protect the interests of pension fund members”. The role of the Pension Fund Adjudicator is most visible during the contested matter between the beneficiaries of pension funds and the trustees of pension funds.

The Pension Fund Act, 24 of 1956 states that the principal objective of the PFA “ shall be the disposal of complaints lodged in terms of section 30D of the Act in a procedurally fair, economical and expeditious manner. It further states that the PFA is appointed in terms of Section 37C of the Act. OPFA Annual Report (2013/14:6) makes it clear that the Act prefers that complainants approach their funds with a complaint before approaching the PFA. However, it is deemed undesirable for the PFA to insist on compliance with the section as it would have resulted in unnecessary delays in resolving complaints, thereby, resulting in prejudice to complainants.

Regarding the disposal of complaints, Section 30E of the Pension Funds Act, the Adjudicator shall investigate any complaint and may make the order which any court of law may make. OPFA Annual Report (2013/14:6) further indicated fractious relationships between employers and members of pension funds upon termination of service, with complainants often citing verbal responses received from uncooperative funds and administrators; and consideration for the financial circumstances of most of the complainants that approach the PFA who are often unemployed. Section 30E of the Act further stated that:

- “Any complaint dealt with in terms of subsection (1) (b) shall be recorded by the Adjudicator and shall, for purposes of section 30H (3), be deemed to be a receipt of a complaint.
- If the complaint, dealt with in terms of subsection (1) (b), is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with it in terms of subsection (1) (a).
- In the event the Adjudicator intends to conduct an investigation into a complaint he or she shall afford the fund or person against whom the allegations are made the opportunity to respond to the allegations. .

2.5. Retirement Fund Regulation

In South Africa pension funds are regulated by an Act of Parliament, Pension Funds Act, 24 of 1956. It is through this Act that the Minister of Finance has the executive authority to appoint, the chairperson of the Financial Services Board, which is responsible for overseeing the retirement industry (FSB Annual Report, 2013:7).

The challenges experienced in the retirement fund industry are not unique to South Africa, in the United States of America the Employee Retirement Income Security Act was enacted in 1974 by Congress for the purpose of protecting the interests of fund participants in employees benefit funds and their beneficiaries by providing for appropriate remedies, sanctions, ready access to the Federal Courts and providing state and federal venue for claim adjudication (Diaz, 2014:5).

2.6. Minimum requirements to qualify as Pension Fund Trustee: South African Context

Currently it appears that the pension fund trustees do not have a specific prescribed academic qualification which serves as a minimum requirement for one to be a trustee. Evidence to this is the extract from the National Budget Speech of 2013, by the then Finance Minister, Mr Pravin Gordhan, which says “Governance reforms of retirement funds will also be implemented, with measures in place to ensure trustees of retirement funds are trained once they have been appointed. I intend to call up a conference of all trustees this year to take this process forward” (National Budget Speech, 2013:19).

It was during the 20th Annual Pension Lawyers Association Conference in Johannesburg on 02 March 2015, where the topic of the day of the day was “Trade Union and Retirement Funds” when Webster shed some light into how representation in retirement began with the following developments:

- In 1983, MAWU, forerunner of NUMSA, won the right to sit on the Pension Fund;
- 1987, CWIU won the right to co-manage the Chemical Industries Pension Fund;
- The idea grew that union trustees could influence funds to invest in a socially responsible way; and
- Unions also played an important role in putting the idea of “social investment” and corporate citizenship on the retirement fund agenda.

In what appeared to be a challenge , Webster quoted the comment of the then Education Officer of the Federation of South African Trade Unions (FEDUSA), 1981, Alec Erwin as saying “Workers have virtually no information on how much they have contributed, how the money is invested and how interest is calculated”. It is against this background that trade unions in South Africa are seen to be the front-runners when it comes to the interests and the socio-economic welfare of their members during their working time and post-employment.

In line with Erwin’s view in 1981, Webster further highlighted the following challenges faced by the trustees representing their respective trade unions in the retirement funds:

- Trustee training by unions not developed, since training must empower trustees to deal with all challenges - core issues, such as governance, risk and return, which are (NUMSA Resolutions);
- Trustees tended to be passive, relying on service providers for expert advice; and
- Trustees often see appointment as a perk and are intimidated by asset managers.

2.7. Minimum requirements to qualify as Pension Fund Trustee: International Practice

Steward and Yermo (2008: 17) indicated that some countries like Australia, Finland, Germany and Poland had prescribed certain specific qualifications and professional expertise that pension fund trustees should possess in order to

perform their duties more effectively. Stewart and Yermo (2008: 17) further stated that other European countries have introduced general suitability requirements that trustees must satisfy beyond the basic disqualifying conditions, like criminal records or insolvency) that exists in most countries..

Stewart and Yermo (2008: 17) further indicate that the United States of America has introduced disqualifying criteria for certain individuals from serving on the boards of trustees. The disqualifying criteria differ across the countries.

It is against this background that one can indicate that there is a need to have minimum academic requirements for one to qualify as a trustee in South Africa. There is also a need to have a disqualifying criterion for the trustees. The need for academic qualifications for trustees was emphasised by Hunter during the Pension Lawyers Association Seminar in Sandton on 09 October 2014. Hunter indicated at the conference that the FSB has to this end submitted a proposal to the South African Qualifications Authority (SAQA) for National Trustees Qualifications for possible approval.

Lastly, it appears that the reason for non-existence of a set minimum requirements for trustees in South Africa is the fact that trade unions appears to have more influence on the management of the affairs of retirement funds due to the long history of trade unions not trusting employers with the financial interests of their members.

2.8. Trade Union involvement challenges

Webster stated on slide 7 of his presentation during the Pension Lawyers Association Conference in Johannesburg, 02 March 2015 that around 2007 some unions broke ranks as alternative strategy of union investment companies emerged, like the Mine Workers Investment Company and Hosken Consolidated Investments. This development further indicates how serious pensions are in the lives of employees after retirement.

Webster's argument is further confirmed by the FSB 2nd Quarter Bulletin (2008:15) whereby it is confirmed that the resolution in question by CCPPWAWU sought to impose obligations on trustees elected or appointed by trade unions or its members to manage benefit funds established by the union, and if those trustees did not follow the union mandate, they would be in breach of their duties to the union and would face expulsion from the union and removal from the board of trustees.

However, it is stated that a court found that a trustee has obligation to exercise an independent judgment, regardless of the views of the trade union or employer which appointed him. Therefore, it can be said that a trustee is expected to exercise an independent judgment as to what constitutes the best interest of the fund, its members and beneficiaries. Thus, declaring the CCPPWAWU resolution unlawful (FSB 2nd Quarter Bulletin, 2008:15).

Had the resolution be allowed to stay it was likely to have undesirable results to the dependents of the members, since the dependents are in most cases not members of the trade unions in question, nor employees of the organisations that are participating in the retirement funds which are co-managed by the trade unions.

Webster further indicates that trustees are caught between being elected on the basis of their popularity and their ethical standing, and that NUMSA wants the Act amended to allow union representation on the funds, including union recall and accountability. This NUMSA demand is similar to the resolution of CCPPWAWU, which was nullified by a court of law.

As a cause for concern Webster indicated on slide 10 of her presentation at the Annual Pension Lawyers Conference on 02 March 2015 in Johannesburg that there is R20 billion in unclaimed benefits, many beneficiaries are not adequately informed by employers, unions and fund administrators that their dependents-including children are entitled to death benefits, and lastly, members are not told that even if they are dismissed they are entitled by law to a prescribed minimum benefit.

This could be attributed to the fact that to this end there is no specific training intervention which is aimed at equipping trustees with the relevant and necessary skills and knowledge required to function effectively as trustees, and perhaps rationality is lacking in the manner in which trustees deliberate on the issue of unclaimed benefits. Rationally it is supposed to be obvious to trustees that it is their duty to trace and find beneficiaries and dependents, and that someone out there is in need of those unclaimed funds to improve his / her socio-economic welfare.

2.9. Latest Development

To this end, the Financial Services Board shows that there is a proposed SAQA accredited National Trustee Qualification which is aimed at all trustees of pension funds in South Africa (Hunter, 2014: slide 6). This approach is in line with the government's governance reforms which calls for the training of trustees once they have been appointed within six months from the date of appointment (Hunter, 2014: slide 2).

Hunter (2014: slide 6) states that the need for an academic qualification for trustees is informed by the onerous nature of the duties and responsibilities of trustees.

2.10. Appointment of Pension Fund Trustees

Draft Information Circular of 2015 (p1) reference 12/12/25 provides for the appointment of board members in terms of section 7A of the Pension Funds Act as amended by the Financial Services Laws General Amendment Act, 45 of 2013 which says:

” (1) notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the board shall have the right to elect.

(1A) The composition of the board shall at all times comply with the rules of the fund and any vacancy on such board shall be filled within such period as

prescribed, which is ninety days from the date on which the position became vacant.”

It is further noted that the registrar of pension funds recognises that sound governance of a fund requires that the members of the board of the fund together must have the appropriate knowledge and skills in regard to matters such as:

- That the retirement funding and, if applicable, provides risk cover needs of the members of the fund, taking into account the profiles of its membership as a group and the nature and needs of other stakeholders in the fund by ensuring the following aspects:
 - Sound governance and compliance with applicable laws;
 - Fair treatment of its members and other stakeholders;
 - The appropriate and effective management of its risks;
 - Appropriate and effective communication with members and other stakeholders; and
 - Policies and strategies that would be appropriate for the fund to adopt in relation to the investment of its assets, and the manner in which those strategies may be implemented effectively.

It is further noted that in order to ensure that a board is not over-dependent on the knowledge and skills of only one or few board members when making decisions in regard to a specific matter, each board member should have not less than the minimum levels of knowledge and skills so that he / she may properly engage in discussions on the matter before the board makes its decisions with regard to all matters of substantial importance to the fund and its members (FSB Draft Information Circular, 2015:3).

FSB Draft Information Circular (2015:4) indicates a significant progress towards the establishment of a new set of knowledge and skills measurement standards by the registrar of pension funds after consulting with representatives in the retirement funds industry.

It should also be noted that in order to assist board members to acquire the appropriate knowledge of the principles of sound fund governance and

governance policies and practices designed to ensure compliance with those principles, the FSB created the Trustee Toolkit, a free on-line training course (FSB Draft Information Circular, 2015:7).

To this end, it can be said with certainty that for one to qualify as a trustee of a pension fund in the South African context is a matter of agreement between the trade union and the employer concerned. The issue of academic qualification is not a key for one to be elected or nominated as a trustee.

Furthermore, one cannot say whether the proposed National Trustee Qualification by the FSB will be accepted by all trade unions, given the statement by Webster that it is the wish of trade unions that trustees should be accountable to trade unions rather than the fund itself. Of significant interest is what will happen if the candidate of choice by the trade union cannot or is unable to obtain the proposed National Trustee Qualification once it is approved by SAQA.

2.11. Trustees Duties

2.11.1 The duty of care

Waitzer & Sarro (2013:30) stated that trustees should be seen to be caring towards the fund's beneficiaries, in line with a fiduciary's duty to care for the beneficiaries.

2.11.2 The duty of loyalty

Waitzer & Sarro (2013:30) further stated that one more other duty of trustees is to be loyal and serve in the best interests of their beneficiaries.

2.11.3 Giving beneficiaries a voice

Waitzer and Sarro (2013:32) are of the view that giving beneficiaries a voice will help trustees in fulfilling their duty of loyalty and caring through an improved understanding and knowledge of the interests of beneficiaries, this would in turn

assist beneficiaries in making informed decisions on matters affecting their interests.

2.11.4 Duty to inform and educate beneficiaries

Waitzer and Sarro (2013:32) stated that enough information must be shared with beneficiaries, so that they can be in a good position to make informed requests.

2.11.5 Duty to consult with beneficiaries

Waitzer and Sarro (2013:32) acknowledged that in a trustee-fiduciary relationship, the final authority in decision-making should be the competency of the trustees alone. However, that does not necessarily mean trustees should not consult with members of the fund.

2.11.6 Duty to trace dependents

David (2012:31) states that the determination of the dependants of a deceased member is an onerous task which exposes a Board to a great deal of risk. A Board is required to identify both legal and factual dependants. These duties clearly place an obligation on the Board when investigating the circle of potential beneficiaries to conduct an investigation which is carried out with diligence (David, 2012:32).

David (2012:32) also states that boards appear to fail when it comes to the actual process of identifying a dependant. In effect a Board which fails in its identification of the dependants will never be able to satisfy the requirements of section 37C because the basis upon which the section is premised is that the correct dependants have been identified.

Accordingly, a failure in the identification process will result in the social outcome envisaged by the Legislature being thwarted (David, 2012:33). This is clearly reflected in the following complaints as referred to the Office of the Pension Funds Adjudicator for intervention:

- Emily Mampoto Maphanga Versus Anglo Group Provident Fund, Case number PFA/MP/1425/2004, this case was alluded to in Chapter One.
- Merriam Napogadi Komana Versus Samancor Group Provident Fund, Case number PFA/MP/4828/2005/LM/th, this case was alluded to in Chapter One.

The above two cases are evidence of failure by some boards of trustees to identify the correct dependents.

Mhango and Dyani (2009:145) indicated that trustees have an obligation to make an appropriate mode of payment to minor pension beneficiaries. In essence this entails that trustees have the authority to effect payments to beneficiaries and or dependents, and to withhold a payment if the board is satisfied that there are reasonable grounds to withhold a payment. However, it should be noted that the decision to pay or not to pay death benefits should be in the best interest of the beneficiaries or dependents and nothing sinister.

Any wrong payment by the trustees can have undesirable consequences to the socio-economic interests of beneficiaries and dependents. The same can be said about withholding payment, because it can mean that beneficiaries or dependents can be deprived access to medical needs or educational opportunities as they will have no means to pay for their basic needs, whilst their money is kept somewhere in a trust fund.

Below are the duties of the board of trustees for pension funds as stated in Circular PF 130 (2001:6) that:

- “ The board of trustees has an obligation to ensure that the risk associated with all outsourced activities are well identified and properly monitored;
- the board of trustees is expected to ensure that clearly defined investment guidelines and performance benchmarks are in place by taking account of the investment policy, and that the responsibilities of investment managers should be clearly defined in a written agreement;

- The board of trustees is expected to satisfy itself that there are control measures in place for the purpose of ensuring that the investment managers operate within the fund's investment policy, and have adequate controls in place to ensure the security of the assets;
- the board of trustees has an obligation of making sure that sufficient and relevant information is made available to fund members and beneficiaries regarding their rights, benefits and duties as stipulated in the fund's rules;
- It is expected from trustees that upon admission to a fund, a new member should be provided with an explanatory pamphlet within three months of joining. In addition, the fund is required to furnish each member with an annual benefit statement, within six months after the financial year-end of the fund. However, this does not happen in certain situations, like in the private security industry, where members only become aware that their employers were not subscribing to funds, only when they had exited employment and trying to withdraw from the fund by claiming what was due to them.
- Trustees have an obligation to provide for the information needs of the fund members concerned, and also communicate the appropriate information on time in a professional way, so as to enable members to make informed choices.
- Responsible for any contribution for which the employer is liable to pay in terms of the fund rules. Both employer and employee contributions have to be paid over not later than seven days after the end of the month for which they are due, either to the fund's accounts, the fund or to insurer in case of an audit-exempt fund".

Section 7D of the Pension Funds Act No. 24 of 1956 stated that one of the duties of the board shall be to ensure that proper registers, books and records of the

operations of the funds are kept, inclusive of minutes of all resolutions passed by the board.

In the event that contributions are not paid on time or are not paid to all members of the pension fund together with their dependents stand a chance of losing their benefits. In the event the of members going into retirement, they will lose, and in the event of the member dying, his/her dependents will not get any death benefits. There was a similar situation in the security industry where some security companies failed to pay their monthly contributions.

Circular PF No 98 dated May 2001: p6 further states that trustees have a duty to seek and source professional advice on matters where board members do not have sufficient expertise to perform certain duties, like those related to investment decisions and on legal matters. In cases whereby a board takes such advice, Circular PF No 98 dated May 2001: p6 also stated that the board must be careful before endorsing it as the board remains responsible for the final decisions.

For the purposes of this study, attention shall be paid to the way in which pension fund trustees apply and carry out their tasks related to Section 37C of the Pension Funds Act, 24 of 1956, and what informs the trustees when executing their task of investing monies of the pension fund in an attempt to increase the monetary value of the pension fund. Makhubela (2015:1) indicated that retirement funds in South Africa are managed by well-informed and knowledgeable trustees.

2.12. Point of interaction between dependents and trustees

To this end, it still appears that the first point of interaction between trustees of pension funds and dependents in South Africa is when the dependents start the process of claiming death benefits. And with money as a sensitive matter, all people who think and believe that they were the dependents of the deceased, expect to get a share out of the available death benefits. In certain cases possible dependents are shocked to learn that there were other beneficiaries unknown to them, and those that they knew but never thought that they were also entitled to get a share of the available pension death benefits in line with the prescripts as

laid down by Section 37C of the Pension Funds Act, 24 of 1956; an example is Maphanga Mampoto Emily vs. Anglo Platinum Group Provident Fund, Case number PFA/MP/1425/2004.

Again, another possible point of interaction appears to be a situation, when the dependents feel that the monthly payment they receive is not enough to cover most of their basic needs, and demand that the monthly payment should be increased, or the monthly payment is reduced or stopped. That is where dependents will be informed that part of their benefit share has been invested or there is something happening with the Fund Umbrella Trust which is supposed to effect the monthly payments.

An example of such a situation was the inability by Living Hands Umbrella Trust, under Fidentia Asset Management to effect the monthly payments to the widows and orphans of former mine workers who were members of the Mine Workers Provident Fund. The above two situations appear to be the best time in which dependents will find out what is happening with their death benefits.

2.13. Trustees obligations in terms of Section 37C

According to David (2012:27), Section 37C tasks the Board of trustees to do the following:

- “ To determine the potential beneficiaries to be considered in the distribution, that is, those persons that satisfy the definition of dependant in relation to the deceased member, inclusive of other persons who may have been nominated by the deceased member as his / her preferred recipients of the death benefit;
- To determine what portions, in the Board’s view, would be equitable benefits for each of the identified potential beneficiaries or, if there are only nominees, to determine the amounts which are required to be paid to the nominees in terms of the nomination form;

- To decide on the best suitable means of payment to all identified beneficiaries, to whom the board has decided to pay a benefit, and thereafter to effect payment”.

David (2012:19) further noted that Section 37C cannot be discussed in isolation, as a Board when acting in terms of that section is still required to make sure it complies with other requirements of legislation. Accordingly, to the extent that the Act has overreaching sections which regulate performance by a Board then a Board would need to ensure compliance with such provisions as well as with section 37C.

David (2012:19) indicated that the Board has a fiduciary duty to both the fund and its members. Furthermore, David (2012:19) indicated that this fiduciary duty exists in both the common law and statutory intervention, that is, it is expressly recorded in the Act. Further, a Board is also obliged to act in accordance with the rules of the relevant fund. Thus, if the rules record duties over and above those contained in law, then the Board would also need to comply with those other duties when distributing a death benefit (David, 2012:19).

The Act, other relevant legislations and the different rules place onerous duties on Boards. According to David (2012:19) the Board is mandated with an important task of ensuring that funds are managed in a professional way and remain financial viable. This multifaceted task focuses on at least more than one person’ whose interests and outcomes may tend to diverge more often than not (David, 2012: 19).

David summed it up 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 intention. The problem lies in the execution and the resultant legitimate anxiety felt by those who may fall victim to a claim of

maladministration in trying to make sense of it. Any successful claim for maladministration will be borne ultimately by the other members, the participating employer, or perhaps even members of the board of management (David 2012:20).

Furthermore, Ammann and Ehmann (2014:7) state that the board of trustees is the key element in the management framework of pension schemes. The Pension Funds Adjudicator made it clear in her speech during the Pension Funds Lawyers' Association on 02 March 2015 that Section 37C(1) (bA) is clear regarding instances where a member has dependents and has also designated nominees, and also emphasised that this section does not come second to section 37C(1)(a).

During the same conference of the Pension Funds Lawyers' Association on 02 March 2015, the PFA further indicated that what the board needs to do is to investigate and at the end thereof they must have identified dependents and nominees (if any) and their financial circumstances, and it is in these instances that it is always crucial to determine the financial status of the dependents and their maintenance needs as this is what will guide the board in its consideration of the nominee, and that the financial status of each dependent is required to determine the reasonable maintenance needs of the beneficiaries.

Great care has to be exercised to take into account the total financial picture of beneficiary/nominee to every extent possible. In conclusion, the PFA mentioned that her office would hold road shows in the remaining Provinces to raise awareness regarding the OPFA's mandate.

Nevondwe and Odeku (2014:773) stated that the:

. . . advent of section 37C brought a statutory regime which express freedom of testation and rather look to the board of a fund to distribute the death benefit. The board may only pay the dependents of a deceased (either factual or legal) or the persons he has recorded on his nomination form. The section relies on the board to exercise its discretion in a manner which results in an equitable distribution of the death benefit notwithstanding that it does not provide any guidelines as to how this is to be achieved.

In some instances the decisions of the boards of trustees related to their application and interpretation of Section 37C are found to be wanting from the beneficiaries and dependents that are not happy with the manner in which trustees exercised their discretion in decision-making. It is an open secret that numerous decisions of fund trustees are challenged by the identified and the self-identified beneficiaries because they are unhappy with the manner in which the trustees have distributed pension death benefits. It ultimately ends with complaints being lodged with the PFA as reflected in the OPFA Annual Report 2013/14, annual reports for previous years, and on current newspaper articles. Many such complaints should never have arisen or could have been easily solved by a proper exercise of discretion on the part of the board.

According to David (2012:16), the purpose of section 37C is:

“ to restrict a deceased member's freedom of testation in relation to the benefits payable by the fund in the event of death. The guiding principle is that such assets do not form part of the deceased's estate and are required to be distributed in accordance with the statutory scheme which gives preference to need and dependency above the member's choice. The section imposes an onerous duty on the board of management of a fund to determine need and to effect an equitable distribution among the deceased's dependents and nominees”.

Although, one of the assumptions is a basic understanding of the provisions of section 37C, it can nevertheless be mentioned that Boards face great risk when they allocate the benefits of an insurance policy, which exists outside a retirement funding arrangement.

2.14. Roles and Responsibilities of Trustees

The following were identified as the roles and responsibilities of trustees by the FSB undated document titled “*Role of Trustees*” page 8:

Management of retirement funds and compliance with the requirements that apply to these funds:

- Manage retirement funds;
- Ensure that all decisions and actions are taken according to the retirement fund laws and rules of the fund.

Acting in the best interest of the members of a fund (i.e. to ensure the best returns by making sure that employers do what is expected of them):

- Ensure that members receive the best return on their invested funds by asking questions and making sure that trustees make wise investments.

Making sure that the assets they are responsible for are not abused and that they themselves do not become open to bribery:

- Keeping a close watch over administrators to ensure members' assets are managed properly according to the law. Trustees must not accept bribes/ gifts/ presents/ discounts in exchange for votes. This is the element that lacked during the sale of Mercantile Assets to Mantadia, whereby the trustees of the Mine Workers Provident Fund were said to have been absent and silent throughout the duration of the sale of Mercantile Assets to Mantadia, which later became known as Fidentia Asset Management, that later messed up the fund's monies (FSB 2nd Quarter, 2008: 14).

Raise understanding of trusteeship:

- Teaching others about the work of trustees and letting them know why the role of trustees is so important.

The board of trustees, its committees, duties and fiduciary responsibilities:

- The job of a trustee as a member of the board of trustees is to carry out his or her responsibilities for the benefit of members, and not for personal gain.

Governance and stakeholder relationships:

- Ensure that the fund is managed in a transparent and fair manner, that there is adherence to the rules of the fund, and that the rules are in line with the relevant legislation.

FSB undated document “*Role of Trustees*” p8, paragraph 2.2.7 stated that trustees are playing a constructive role in ensuring the role of trustees is well understood:

- Keep up to date with trends, developments and topical issues in the retirement funds industry to improve on self-development as a trustee and share own knowledge with others, especially fellow-trustees and fund members

Exploring different investment strategies and policies:

- Look for the best ways to invest members’ funds;
- Look at various plans for investing member’s funds and find ones that are most suitable for providing benefits contained in the registered rules.

2.15. Trustees’ duty to invest funds

Chowdhury (2015:387) states that trustees have a duty to invest the trust funds to provide an income for beneficiaries and to maintain or increase the value of the trust. Chowdhury (2015:387) further states that in Britain, the Trustees Investment Act of 1961 extended the trustees power of investment to include shares but the investment power was restricted, in order to protect beneficiaries from the trustees losing the trust in risky investment. The British Trustees Act of 1962, like Regulation 28 in South Africa, is aimed at protecting the beneficiaries of retirement funds.

Waitzer and Sarro (2013:34) stated that investment it is through investment so that the trustees can be in a position to guarantee the good future well-being of beneficiaries. Waitzer and Sarro (2013:34) further clarified that this means taking

into consideration how investment decisions will affect the stability of financial systems, the direction of the economy, and lastly, that the fact that an investment decision may produce positive relative financial returns over the short term has no bearing on whether such an investment will yield benefits to current or future pension beneficiaries.

It can be inferred with confidence that in the event of an investment choice of trustees going wrong, it cannot be denied that it is the members and beneficiaries who lose financially and if it turns negatively affecting their social well-being. Waitzer and Sarro (2013:29).

On 17 September 2013 during the launch of “Responsible Investment and Ownership: A Guide for Pension Funds in South Africa” in Johannesburg, Ms Hunter said “ *a fund has a fiduciary to act in the best interest of its members whose benefits depend on the responsible management of fund assets, and that this duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn adequate risk adjusted returns suitable for the fund’s specific member profile, liquidity needs and liabilities*”. Hunter also stated that a fund must have an investment policy statement, which must be reviewed at least annually.

This speech again touched on the famous Fidentia Investment scandal in association with the Living Hands Umbrella Trust and the Mineworkers Provident Fund, which had to this end left many widows and orphans of the former mineworkers in a destitute situation, worse than before the scandal, taking into account that by virtue of being widows and orphans who had lost breadwinners and had already experienced a great loss in their socio-economic status.

The main victims of the Fidentia scandal were 46 000 widows and orphans of former mine workers who lost their lives (FSB Bulletin 2nd Quarter, 2008:15). According to the FSB Bulletin 2nd Quarter (2008:14) the Mine Workers’ Provident Fund entered into an agreement with the Mercantile Asset Trust Company to invest and administer the benefits of deceased members of the Mine Workers Provident Fund.

The FSB Bulletin 2nd Quarter (2007:15) stated that in 2003 the Mercantile Asset Trust Company was sold to Mantadia, which was later bought by Fidentia, and that neither the trustees of the Mine Workers Provident Fund nor the trustees of other retirement funds that entrusted money to Mercantile were given a say in this sale, whereby it becomes clear that the trustees of the Mine Workers' Provident Fund were nowhere near the scene of events and could not have influenced the events to prevent the plunder.

The worrying factor in this regard would be the absence or silence of the trustees, as it does not reveal what the trustees did after finding out that their business relations with Mercantile had been sold to Fidentia, with terms and conditions not known to them as trustees. To this end, one cannot say whether it was a failure by the trustees, or it was a board resolution for the trustees not to worry about the transfer of their business relationship from Mercantile to Fidentia.

Another on-going pension fund saga in South Africa with undesirable socio-economic implications on beneficiaries and their dependents is the Transnet Pension Fund as reported by the South African Press Association (SAPA) on 04 September 2014, where it was reported that Transnet's application for leave to appeal a ruling allowing its pensioners to bring a class-action suit was dismissed by the High Court in Pretoria.

However, there is no available official document for public scrutiny on what went wrong with the Transnet Pension Fund that necessitated a court action by the pensioners. It can be inferred with certainty that there is something undesirable that the trustees of Transnet Pension Fund did not handle well to the dissatisfaction of the pensioners, and the likelihood is that it entailed a decision that went wrong.

It should further be noted that regardless of the fact that the beneficiaries of Transnet Pension Fund belong to a government parastatal, Transnet, and do not have recourse for a remedy at the OPFA. This does not erode the fact that their

socio-economic welfare is not affected in the same way as those who have recourse for remedy at the Office of the PFA.

Makhubela, the Chief Director of Financial Investments and Savings at the National Treasury, indicated during the launch of the sustainable returns on 17 September 2013 that the decision-making power for investing pension funds rests with the trustees.

The Government Employees Pension Fund (GEPF) Member Guide, undated document on page 5 shows that when it comes to investing funds, the Board of Trustees uses the investment services of the Public Investment Corporation, which is owned by the South African government and takes care of the investment needs of about 35 public sector clients. GEPF's Board of Trustees keeps a close eye on how the Public Investment Corporation invests GEPF funds and makes sure that all fund investments are in the best interests of its members and pensioners (GEPF Member's Guide, undated document on page 5).

It is stated in a document titled 'Responsible Investment and Ownership: A Guide For Pension Funds in South Africa' (2013:7) that "*the core objective of responsible investment is to act in the best interests of pension fund members, and must therefore be considered in all investment decisions*".

Similarly, the guide is clear that trustees cannot hand responsible investment to asset consultants or asset managers. While these service providers can provide valuable support, the board retains full authority over responsible investment, and is also responsible for investment performance.

Luthuli, the Chairperson of Pension Funds Principal Officers Association commented that whatever one's reasons might be for investing responsibly, a retirement fund also needs to be able to do intelligent risk assessments - assessments which will take into account the monetary return on an investment as well as the feasibility of on-going success if a fund continues to invest in a certain way (2013:13)

Girdwood (2013:6), is of the view that the amendment of Regulation 28 by the Minister of Finance is a reflection of the obligation of the pension funds trustees towards a sound retirement investment, which is at the centre of Regulation 28.

According to Girdwood (2013:7) a good investment decision should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character. It is further stated that the revision of Regulation 28 is considered to be a global best practice in that it requires trustees to consider and apply their minds to responsible investment.

Girdwood (2013:7) goes on to indicate that there is a lack of understanding on the side of trustees on how to plan, implement and monitor the principle-based approach of Regulation 28, and that the FSB and National Treasury are still due to release directives, information circulars and toolkits that will assist trustees in carrying out the task.

According to Girdwood (2013:3) good governance of pension funds and trustee and fiduciary duties remain at the heart of trustees' role, responsibilities and legal obligations which stated that trustees are expected to act in the best interests of current and future members of the pension fund.

According to Girdwood (2013:5), it is a fundamental principle of law that trustees as fiduciaries must, at all times, act with the utmost good faith and in the best interests of the pension fund and its beneficiaries (present and future) and with a degree of prudence, care and diligence. It is further stated that trustees have a fiduciary duty to act in the best interests of beneficiaries, whose benefits depend on the responsible management of fund assets. In principle, this implies that when dealing with fund matters, trustees should take the same care that the trustee would have taken in the administration of his/her interest or that of his/her dependents.

Girdwood (2013:15) recommended that the trustees should consider current and anticipated future economic realities when making investment decisions. It is

further required from trustees to find a balance between the interests of the current and future beneficiaries.

2.16. Summary

It has been noted that indeed the retirement industry plays a significant role in society as a whole, starting from the government's statutory obligation to provide and distribute social welfare grants, which have never been enough to cater the needs of all community members. It is part of the social responsibility of most employers to show that they care about their employees' social and economic welfare after retirement. Most employers established retirement funds, in the form of pension and provident funds, which were earlier managed and governed according to the rules and regulations of the employers. The establishment of the retirement funds resulted in the creation of a relationship between employers and their employees, who became members and beneficiaries of such retirement funds. The nature of this relationship was extended to dependents of such employees to stand as beneficiaries in the event that their breadwinner ceases to exist.

The nature of this relationship became so complex that it necessitated the regulation, hence the enactment of legislation governing the retirement industry, and other oversight institutions that ensured that all role players in the pension fund industry comply with all the required and prescribed procedures and regulations, being the FSB , whose main duty is to monitor the register and regulate the activities of retirement funds, and the OPFA whose main duty is to mediate in the event of a dispute between dependents / beneficiaries of pension funds and the funds as represented by the boards of trustees.

Over a period of time with the emerging of organised labour in the form of trade unions, formed for the sole purpose of advancing employees' interests in the course of their employment relations with employers. Unions demanded to have a say and representation in the affairs of retirement funds. The involvement of trade unions in the administration of retirement funds also influenced how trustees

should be nominated or elected, and how trust funds should be invested in view of earning interest for the benefit of the fund members.

However, regardless of all these tight procedures, rules and regulations, the nature of the relationship between funds as represented by trustees and beneficiaries/dependents still remains sour as a result of some of the decisions taken by trustees, especially in the application and implementation of what is thought to be in line with Section 37C of the Pension Funds Act. In certain situations, the courts of law have to intervene. The PFA and the FSB do not have jurisdiction.

An example of such situations was the prosecution and sentencing of Mr A Brown, Chairman of the former controversial Fidentia Asset Management in which an investment of the Mine Workers' Provident Fund went wrong and left many widows and orphans in an undesirable socio-economic state, and the current case between Transnet Pension Fund and its retired members, which is currently in the courts of law.

The literature review was followed by the description of the research methods which was followed in the empirical part of this research project.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

Literature review revealed the existence of a gap in research with regards to the awareness of the impact of the decisions of pension funds trustees on the socio-economic welfare of beneficiaries. This chapter dealt mainly with research design and methodology. It focused on the salient issues related to the research design, instruments, sampling procedures and processes as well as pre-testing and validation of the research instrument. Furthermore, the chapter gives 'guidance' to the analysis of data based on the understanding of the study objectives.

It was also important to identify possible obstacles, which were referred to as limitations to the study. In addition, the researcher indicated how all the ethical considerations and procedures would be adhered to prior to commencing with the data collection field work as well as in terms of obtaining consent from the participants and all gate-keepers where applicable. The conduct of the researcher during data collection, how data would be reduced, analysed, reported and disseminated, including how the records of the study would be saved once the study had been completed were all discussed in this section.

3.2 Objectives

The choice of research methodology was informed by the following research objectives:

- To determine the impact of the decision-making by trustees on the socio-economic welfare of beneficiaries who have to rely on pension pay-outs or death benefit.
- To find out the challenges facing beneficiaries and their experience of dealing with trustees: surviving spouses and retired members.
- To find out the nature of changes in lifestyle of widows before versus after losing their breadwinners.

- To find out the most common complaints received by the OPFA and how the OPFA interacts with the society at large.

3.3 Research methodology

The choice of a research methodology was influenced by the research question and study objectives. It was possible for the study to follow a mixed research methodology. In this study, the qualitative research method was used, with a little overlapping to the quantitative approach because of the nature of the research question and the study objectives. Research methodology refers to a logical and well organised set of methods that support one another and that consist of the “goodness of fit” to deliver data findings that will reflect the research problem and match the research aim Henning (2004:36). In order to answer the research questionnaire, there was a need to use a combination of unstructured and semi-structured questions for the face-to-face interviews, case studies and focus group discussion topics. All the interview questionnaires and topics for focus group discussions were sent to the supervisor for scrutiny before embarking on the actual data collection field work.

Henning (2004:3) stated that qualitative descriptive studies should be chosen when the researcher wants to understand, and also to explain an argument, by using evidence from data and from the literature, what the phenomenon that is being studied is all about. Du Plooy-Cilliers *et al* (2014:93) defined research as a procedural plan that is adopted by the researcher to answer questions validly, objectively, accurately and economically. It was for this reason that a qualitative research approach was chosen for this study. Swart (2012:45) also stated that the purpose of any qualitative research study is to describe and understand rather than explain human behaviour.

For this study the qualitative approach assisted the researcher to unpack the impact of the decisions of the pension funds trustees on the socio-economic welfare of the beneficiaries by interacting with them, the widows, retired members, the focus group of pension fund trustees and an official from the Office of the Pension Funds Adjudicator. Wagner, Kawulich and Garner (2012: 126) mentioned

that qualitative research strives to create a story as it is seen through the eyes of those who are part of that story; to understand and represent their experiences and actions as they encounter, engage with, live through the situations. During the interviews with the widows/orphans of former pension fund members, the researcher had the opportunity to observe the living conditions of these beneficiaries and their lifestyles.

The study was conducted around the grounded theory approach since it allowed the researcher to generate theory from the data or expand or modify the existing theory. According to Wagner *et al* (2012:131) grounded theory relies on data from interviews, observations and documents, and it allows for the use of data from quantitative or mixed methods to be used if needs be. In addition to the grounded theory, the researcher also incorporated the phenomenology approach to the study, which according to Wagner *et al* (2012:132) purely and simply describes a person's experience, since one of the study objectives was to understand the experience of beneficiaries or dependents of pension funds' challenges and experience when dealing with pension fund trustees.

This approach was appropriate for the study since the aim of the study was to find out why it appears that most of the time the decisions taken by the trustees are challenged at the OPFA. Secondly, to find out the conscious thinking of the trustees about the impact of their decisions on the socio-economic welfare of the beneficiaries, and finding out what trustees consider to be the main reason for making wrong investment decisions.

The qualitative research method was also used by Swart (2012:45) when conducting a research on the subject of pension funds. He conducted a series of interviews with different role players in the pension industry. It is against this background that the researcher conducted interviews with members of provident/pension funds, ex-members, beneficiaries who in this study were the surviving spouses or orphans, officials from the Office of the Pension Funds Adjudicator and focus group discussion with trustees from provident/pension funds found at the Greater Tubatse Municipality.

In addition, Wagner *et al.* (2012: 125) also state that qualitative research requires the researcher to engage on a personal level with people who hold the data, meaning that the researcher has to enter into the lives of the persons being studied as fully as possible. This approach is called the phenomenological approach, which Struwig and Stead (2004:16) noted has as its main goal to find common themes to illustrate the range of meanings of a phenomenon. Henning (2004:3) also indicated that qualitative research is interested in understanding and explaining an argument by using evidence from the data and the literature with regard to what the phenomenon under study is all about.

Du Plooy-Cilliers, Davies and Bezuidenhout (2014:174) indicated that the interest of qualitative research lies in the depth of human experience, including all the personal and subjective peculiarities that are characteristics of individual experiences and meanings associated with a particular phenomenon. This approach assisted the researcher to see things through the participant's eye, since the study was aimed at understanding how the participant's socio-economic welfare has been affected by decisions of trustees.

3.4 Population

According to Du Plooy-Cilliers *et al* (2014:132) population can be defined as 'the total group of people from whom information is required'. It was further stated that all the people in the population should share at least one specific characteristic that relates to the research question. For the purpose of this study the people in the population were all stakeholders of retirement funds, surviving spouses (widows), active funds trustees, and officials from the OPFA. They were all coming from Greater Tubatse Municipal area, except the official from OPFA.

The next step was the choice of the selection of the method which was used for data collection, which only happened once the research problem had been developed, with limitations identified and the research design developed and concluded. Du Plooy-Cilliers *et al* (2014:97), stated that a population consists of people all possessing the characteristics in which the researcher is interested. This study was limited to Greater Tubatse Municipal area. The research was

confined to specified available beneficiaries (surviving spouse (widows), retired former members), active pension fund trustees at the Greater Tubatse Municipal area. Only the official from the OPFA was based outside the specified geographic area, and for that reason the interview was conducted in Pretoria at the OPFA.

3.5 Sampling

After identifying the population parameters, the next step for the researcher was to distinguish between the target population and the accessible population. According to Du Plooy-Cilliers *et al* (2014:134) accessible population is likely to include too many elements to reach and analyse – many more than our time and resources will allow for in order to finish the research.

According to Du-Plooy-Cilliers *et al* (2014:131) sampling assists the researcher to determine who could assist the researcher to get the answers to the research question based on the research question. Du Plooy-Cilliers *et al* (2014:131) stated that the researcher need to be selective and find a way to choose who will be included in the research, since it helps the researcher to determine, based on the research question and problem, who or what could best help one to get the answers to a question or help one to solve the problem.

3.5.1 Sampling methods

Two sampling methods are available to a researcher depending on the type of research, probability and non-probability sampling (Du Plooy-Cilliers *et al* (2014:136). Probability sampling is said to be preferred for conducting a quantitative research, as it refers to whether or not each individual in the population has an equal opportunity to be part of the sample (Du Plooy-Cilliers *et al*, 2014:136). Whereas, non-probability sampling is said to be used when it is nearly impossible to determine who the entire population is or when it is difficult to gain access to the entire population (Du Plooy-Cilliers *et al*, 2014:137).

This study touches on money matters and the fact that money is a sensitive issue to certain individuals. It was difficult to compile a list of surviving spouses/widows,

in particular those whose breadwinners belonged to a pension fund and had the opportunity of interacting with trustees. The same approach applied to former members, since not all retired members were willing to participate in a discussion that is related to their pension monies. Regarding the trustees who constituted the focus group, not every trustee was willing to participate for different reasons. It was against this background that the researcher had to embark on a non-probability sampling. Du Plooy-Cilliers *et al* (2014:137) also stated that representativeness of the sample is not considered important in a non-probability sampling for qualitative research.

The other reason for following non-probability sampling was informed by accessibility to the population, willingness to participate in the study, and by the referrals the researcher was getting from those who were able to recommend other possible participants who met the required characteristics.

Non-probability sampling techniques applied in this study were convenience sampling, which was applied during the pre-test of the research questionnaire whereby the researcher approached two known widows and two former members who were accessible to the researcher. The second technique which was relevant and applied was purposive sampling, whereby the researcher included any available widow, willing to participate and whose deceased breadwinner was a former member of pension fund, and had interacted with trustees. Purpose sampling was also applied to former members and the trustees who constituted the focus group. All these were informed by the research question and the study objectives.

Thirdly, snowball sampling was used for the purpose of increasing the sample size which was small due to the difficulty of access to participants who met the characteristics and were willing to participate. The researcher relied on other participants in the study and those who refused to participate to propose others who also fit the population parameters of the study. Snowball sampling was applied particularly to widows and trustees who were not willing to participate. Du Plooy-Cilliers (2014:143) indicated in order to increase the sample size, snowball sampling use of referrals. Regarding the OPFA, an official was allocated to the

researcher by the PFA. The criterion for his selection is unknown to the researcher.

3.5.2 Sampling design

It was recommended to the researcher by the Research Committee of the University of KwaZulu-Natal that a maximum of five participants should be considered for this study when it comes to the surviving spouses, due to the fact that only certain widows in the geographic study area can meet the criteria of participating in the study, and therefore going for anything more than five may be difficult given that the widows needed for this study may still be angry with trustees and the fact that they consider themselves victims of trustees or pension funds, and for that reason may not be interested in participating in this study, and four retired members of pension funds and another maximum of five trustees from different pension funds found in the Greater Tubatse Municipal area, as anything more than five per category of participants would be time consuming and financially expensive and that the accessibility of participants was very critical for this study.

Du Plooy-Cilliers *et al* (2014:144) indicated that the following considerations need to be observed, which concurs with the recommendations of the Research Committee:

- It was important to consider the budget of the project by carefully choosing a sampling method that would provide the same kind of data from a smaller number of elements.
- That the researcher worked within time constraints. Therefore, there was a need to ensure that the sample size and sampling method were not time consuming.
- That the purpose of the research took precedence since this research was not designed to be generalisable to the larger population.
- In situations where error was not the main concern, a sampling method was chosen according to the specific requirements.

3.6 Sample size

The decision to choose non-probability sampling was informed by the anticipated limitation that some of the selected widows, former fund members and trustees may not cooperate with the researcher for one of the following reasons:

- Some suspected that the research was aimed at victimising them at a later stage.
- Secondly, money is an emotional matter to most people, especially those who feel and think that they have been financially swindled by pension funds. Therefore, not every potential participant was easily available to participate in the study.

The sample size which was selected through purposive and snowball sampling comprised both males and females aged between 18 and above, who were:

- Five widows whose deceased breadwinners were members of pension funds and had had the opportunity of interacting with trustees.
- Four males' former members of pension funds.
- Four males, all active pension fund trustees.
- One official from the OPFA.

3.7 Data Collection in Descriptive study

Qualitative research employs a wide range of data-gathering techniques like interviewing, focus group discussions, observations, and seeks insights through structured, in-depth data analysis that is mainly interpretive, subjective, impressionistic and diagnostic (Wagner *et al.*, 2012:126). It was against this background that the researcher collected data through a four-phase approach as indicated below:

- Phase 1: Case studies and document review: The researcher reviewed the legislation governing the administration of pension in South Africa, and selected two case studies from the OPFA related to disputes between dependents of pension funds and trustees of pension funds. According to Du Plooy-Cilliers *et al* (2014:178) a case study recounts a real-life situation by rigorously describing

the scenario in which the phenomenon occurs and it allows for a deep exploration within a natural context, hence it provides a full and thorough understanding of a particular and lived experience of a participant. Du Plooy-Cilliers, Davis and Bezuidenhout (2014:178) further stated that an illustrative case study is an attempt to understand what happened in a specific case. The researcher looked for case studies that were related to the study objectives. For this study, the annual report of the OPFA was used to identify two cases which were all relevant to the research question. The purpose of the document review exercise was to enrich and integrate it into the collected data for analysis.

- Phase 2: The researcher conducted interviews with five (5) surviving spouses (widows) from twenty years and above and four (4) retired former members of pension funds as they were also beneficiaries of pension funds, all from the local villages within the Greater Tubatse Municipal area, using unstructured questions to allow the participants to express themselves freely as long as there was no deviation from the research objectives. This approach is supported by Du Plooy-Cilliers *et al* (2014:142) where it is stated that with purposive sampling, the researcher chooses the elements for inclusion in the sample size based on a set of defined characteristics.

For this study, the researcher purposefully chose persons who reflected the appropriate characteristics required of the sample members, being a beneficiary of a pension fund (widows), retired member of pension fund, sitting pension fund trustees and an official from the OPFA, all of whom were relevant to the research topic. Open-ended questions were used, which Struwig and Stead (2001:92) indicated that they allow the participants to freely answer the questions in their own words and to express any ideas they think apply. Furthermore, it is stated that open-ended questions are suitable since they introduce the subject and elicit general reactions.

- Phase 3: The researcher facilitated focus group discussions with four (4) pension funds trustees from four pension or provident funds with members present at the Greater Tubatse Municipal area within the Greater Sekhukhune District Municipality, under which the Greater Tubatse Local Municipality falls. According to Du Plooy-Cilliers, Davis and Bezuidenhout (2014:183) a focus

group consists of the meeting of a small group of people and a facilitator, who is often also the researcher. A number of participants are gathered for the explicit purpose of expressing their views and opinions regarding predetermined, open-ended questions related to a specific phenomenon, whereby broad questions and themes are identified in advance, and are then used to facilitate a discussion among the participants.

The discussion is conducted in a natural and unstructured way and the participants are free to express their views and opinions about the topic at hand Du Plooy-Cilliers, Davis and Bezuidenhout (2014:183). The selection of the focus group participants was based on their current roles as trustees in the study area and their availability and willingness to participate in the study. The meeting of the focus group discussion took place during the time-off from work by the participants by consensus, as they all participated in their personal capacities not official capacities.

- Phase 4: The researcher conducted an interview with one (1) official from the OPFA. The researcher did not have a role in choosing the official; he was assigned to the researcher by the PFA, as reflected on the gatekeepers' consent for the researcher to conduct the interview with the OPFA.

In this this study a qualitative approach assisted the researcher to understand the impact of the decisions of the pension fund trustees on the socio-economic welfare of the beneficiaries by interacting with the widows and retired members as well as understanding the views, opinions and experiences of other role players in the pension fund industry, in particular the trustees of pension funds and officials from the OPFA. Wagner, Kawulich and Garner (2012: 126) mentioned that qualitative research strives to create a story as seen through the eyes of those who are part of that story; to understand and represent their experiences and actions as they encounter, engage with, live through the situations. During the interviews with the widows /orphans of former pension fund members, the researcher had the opportunity to observe the living conditions of these beneficiaries and their lifestyles.

The study was conducted around the grounded theory approach since it allowed the researcher to generate theory from the data or expand or modify the existing theory, whilst it is further stated that grounded theory relies on data from interviews, observations and documents, and it allows for the use of data from quantitative or mixed methods to be used if needs be (Wagner et al. 2012:131).

Furthermore, grounded theory relies on the researcher developing plausible relationships between and among concepts, and that it is through collection of data that these relationships are elaborated upon by exploring each new situation and making a determination of whether the data fits the theory the researcher is developing (Wagner *et al.* 2012:131). This approach was appropriate for the study in the sense that the study's aim was to understand the impact of the decisions of pension fund trustees on the socio-economic welfare of the beneficiaries of the pension funds.

In addition to the grounded theory, the researcher also incorporated the phenomenology approach to the study, which according to Wagner *et al* (2012:132) purely and simply describes a person's experience. Part of this study was to understand the experience of beneficiaries or dependents of pension funds experience of encountering pension fund trustees.

3.8 Questionnaires as a Research Instrument

According to Struwig and Stead (2001:244) a questionnaire is an instrument used to obtain information from respondents. Research questionnaires can either utilise structured, semi-structured and unstructured interviews. Struwig & Stead (2001:98) stated that a semi-standard interview is a combination of structured and the unstructured interviews, whereby predetermined questions are posed to each participant in a systematic and consistent manner and the participants are also given the opportunity to discuss matters beyond the questions' confines.

It is against the background of the aims and objectives of this study that the researcher decided to use structured and unstructured interviews in order to address the research questions, which are:

- What is the impact of the trustees' decisions on the socio-economic welfare of pension funds beneficiaries at the Greater Tubatse Municipal area?
- How aware are beneficiaries of pension funds of the duties of trustees?
- What are the challenges facing beneficiaries of pension funds in Greater Tubatse Municipal area?
- Where do the beneficiaries of funds seek help in the event of a dispute with trustees?

3.8.1 Questionnaire Design

The purpose of pre-testing and validation is aimed at detecting any possible weaknesses in the design of the research instrument. This section is divided into two parts which are the steps taken to pre-test the questionnaire and ensuring the reliability and validity of the questionnaire.

3.9 Questionnaire Pre-testing

Questionnaires for the interviews with the widows, retired members, an official from the OPFA and the topics for discussion by the focus group were sent to supervisor in advance in September 2015 before embarking on the actual fieldwork of data collection for further scrutiny and recommendations if needs be. The actual field work took place in March 2016. No changes were proposed to the questionnaires. In addition, before the actual data collection, a pilot interview was held with one surviving spouse (dependent), with the purpose of determining whether the instrument could be applied in a manner that is conducive to the more open-ended conversational style required for a qualitative study. Nothing could be found that would have necessitated alterations to the research instrument.

3.10 Trustworthiness of the questionnaire

According to Du Plooy-Cilliers, Davis and Bezuidenhout (2014:253) the purpose of qualitative research is not to generalise results to a broader population, and for that reason qualitative researchers attempt to provide an in-depth understanding

of a phenomenon. It is further stated that since the aim of qualitative research is not to generalise results, 'reliability and validity' are not useful terms to use within these types of studies. Therefore, qualitative researchers prefer to use the concept of "trustworthiness" to measure reliability and validity Du Plooy-Cilliers, Davis and Bezuidenhout (2014:253).

3.11 Research validity and reliability

The researcher strove to ensure the trustworthiness of the data by applying unobtrusive measures as recommended by Wagner *et al.* (2012:137), who stated that the data is collected from the natural environment, where the phenomenon under study takes place. It is recommended that the less the researcher disturbs the scene, the longer time spent in the setting, and the deeper the researcher penetrates the situation, the closer the researcher will get to authentic data. The researcher interacted with the participants as a member of the community, who was only interested in understanding the socio-economic circumstances of the participants, so as to ensure that the participants did not alter anything in their living environment just to impress or attract the sympathy of the researcher.

It is further stated that to achieve high levels of trustworthiness, the researcher must ensure that the situation within which the data is collected is safe and non-threatening, and the relationship with the participants is open, relaxed and trusting, and that the participants need to feel uninhibited about the amount and nature of the data they give the researcher access to, and they need to be reassured that all the information revealed will be treated confidentially and with the necessary sensitivity. To ensure that the participants feel free to participate and engage with the researcher, the researcher assured and guaranteed the confidentiality of the participants' personal details and that all the data collected is not attached to any particular name of a participant (Wagner *et al.*, 2012:137).

In order to overcome methodological problems associated with the validity and reliability of the qualitative research, the researcher complied with the recommendations of Struwig & Stead (2001:146) mentioned below:

- The background of the researcher was communicated to all the participants well in advance;

- The data was taken back to the participants for their comment on its accuracy;
- The use of terminology and interpretation of the data; and
- Another reader was asked to independently provide categories and then compared the coding schemes.

3.12 Ethical considerations

In this study, ethics and protection of the dignity of all stakeholders were ensured and guaranteed as follows:

- Informed consent of all participants was obtained well in advance and the participants were briefed about the nature of the research before they participated in the interviews.
- The right to privacy regarding the identity, nature and quality of the participants' responses was upheld throughout.
- The findings were reported with honesty, even if the results were unfavourable to or different from the researcher's expectations.
- Permission to conduct the interviews was first obtained from all stakeholders before the interviews could be conducted.
- Consent forms were also distributed to all the participants, which also indicated to the participants that participation in the study was voluntary, without financial benefits attached thereto.
- The consent form stated that the participants were free to withdraw from the study at any given time.
- No promises were made to the participants who felt that they had been swindled of their pension benefits. They were not led to believe that the end product of this research would solve their challenges.
- The study did not involve experimentation with human beings, and furthermore, no medication or drugs were involved during the researcher's interactions with all the participants.

The researcher adhered to the generally accepted research ethics' practices as outlined in the "Guidelines for Completing the Human and Social Sciences Research Ethics Application Form" of the institution where this study was

conducted. All the necessary documentation to be used in the research process were submitted to the University of KwaZulu-Natal Ethics' Committee to obtain approval. Indeed, approval was granted.

3.13 Administration of Questionnaire

For this study in particular, there was a need to use interviewer-administered questionnaires. The choice of an interviewer-administered questionnaire was informed by Wagner *et al.* (2012:126) where it was stated that qualitative research strives to create a coherent story as seen through the eyes of those who are part of that story, to understand and represent their experiences and actions as they encounter, engage with, and live through situations. The interviewer-administered questionnaire was in the form of face-to-face questionnaire administration, where the interviewer presented the items orally.

According to Struwig and Stead (2001:86) personal interviews are said to be the most versatile and flexible questionnaire method for the following reasons:

- Unstructured interviews of variable length and relatively long questions may be employed.
- Interviews can be adapted to the situation (individual and context).
- If required, both the interviewer and interviewee can provide further explanations or clarification.

In order to collect the nature of the required data, the use of personal interviews was necessary as it was important to build a rapport with the participants due to the sensitivity of the research question for participants who may regard themselves as the victims of pension fund trustees.

3.14 Data Analysis and Interpretation

To analyse data in this study the researcher used the analytical framework because it yielded positive results when it was used by Swart (2012:50) when conducting a qualitative research on fiduciary responsibility and responsible investment, Swart further indicated that the model consists of three concurrent

flows of activity: data reduction, data display and conclusion drawing. According to Wagner *et al* (2012:132) data analysis focuses on what participants experienced and how they experienced it, and that analysis begins with an in-depth study of one individual's experience, and expands it to include how others experienced the phenomenon, followed by the researcher's interpretation of the underlying meaning and structure of the phenomenon, based on the collective descriptions.

Wagner *et al.* (2012:229) described analysis as the process of data reduction like organising data into tables, tally sheets, summary statements and evaluations and decisions drawn from and confirmed by the data. Wagner *et al.* (2012:231) further indicated that the analysis of qualitative data follows from the purpose and theoretical framework of the study, and understanding the meaning of the data by identifying and analysing themes, a technique shared across qualitative analysis approaches.

3.15 Data Reduction

Swart (2012:50) describes data as the process of selecting, focusing, simplifying, abstracting, and transforming the raw data. Swart further describes open-coding as a part of analysis that deals with the labelling and categorising of phenomena as indicated by the data, which practically involves the reading and re-reading of the field notes and identifying themes in them. This was done by writing one's own headings in the margins of the raw data using different colours to highlight the text in the field notes to indicate repetitive themes.

3.16 Summary

The chapter covered the research methodology followed in this project. Various research methods have been discussed, together with the logic behind the choice of methods used in this study. The questionnaire, together with its administration and data analysis were discussed. Chapter Four focuses on the presentation and discussion of results obtained from the field work interviews, focus group discussion and case study reviews.

CHAPTER FOUR

PRESENTATION OF FINDINGS AND ANALYSIS

4.1 Introduction

The purpose of the data collection for this study was aimed at looking for similarities or differences between what was available in the field of study compared to what literature says about the subject of the research study. Data collection for this study took the form of document review of two case studies from the OPFA Annual Report 2013, face-to-face interviews with widows/ surviving spouses of deceased former members of pension, face-to-face interviews with former/retired members of pension funds, focus group discussions around the table, and a face-to-face interview with official from the OPFA.

The research toolkit used for the face-to-face interviews with widows, former members and the official from OPFA, and a list of topics for discussion by the focus group of trustees. The data collection was divided into four phases as follows:

Phase 1: Case studies which started with document review in the form of legislation applicable to pension funds and two case studies relevant to this study as they relate to pension fund trustees decision making in relation to Section 37C of the Pension funds Act.

Phase 2: Face-to-face interviews with surviving spouses/widows.

Phase 3: Face-to-face interviews with former members of pension funds.

Phase 4: Focus group discussion with active trustees.

Phase 5: Face-to-face interview with official from OPFA

4.2 Phase 1: Case study review

4.2.1 Relevance of Pension Funds Act No. 24 of 1956 to this study

Section 37C of the Pension Funds Act states:

“... the disposition of pension benefits upon the death of member states that any benefit payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19 (5) (b) and subject to the provisions of

section 37A (3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

- (a) If the fund within twelve months of the death of the member becomes aware of or traces a dependent or dependents of the member, the benefits shall be paid to such dependent or, as may be deemed equitable by the board, to one of such dependents or in proportion to some of or all such dependents.
- (b) If the fund does not become aware of or cannot trace any dependents of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependent of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee”.

Finding 1: Section 37C of the Act give legal direction to the board of trustees on how to distribute the death benefits to the dependents of a deceased member, and what should happen to the benefits in the event the fund is not aware or cannot trace any dependent of the member within a specified time frame of 12 months after the death of the member. **Finding 2:** Section 30B of the Act mentioned the establishment of OPFA, whereas, and 30D indicated that the main object of the adjudicator shall be to dispose of complaints lodged in terms of section 30A (3) of this Act in a procedurally fair, economic and expeditious manner.

Furthermore literature pointed the following two cases:

- Maphanga Mampoto Emily vs. Anglo Platinum Group Provident Fund, Case number PFA/MP/1425/2004, in this complaint the contested issue was the distribution of the death benefit.
- Komana Napogadi Mirriam vs. Samancor Group Provident Fund, Case number PFA/MP/4828/2005/LM/th: the trustees refused to recognise the complainant as the second wife and dependant of the deceased.

The challenge facing beneficiaries is the risk associated with the interpretation and implementation of section 37C of the Act when tracing and confirming dependents and when allocating death benefits.

4.2.2 Case 1: TC Khadi Versus Univen Provident Fund & Sanlam Insurance Fund

In the matter between TC Khadi (complainant) versus University of Venda (Univen) Provident Fund (1st respondent) and Sanlam Life Insurance Limited (2nd respondent) (Office of the PFA Annual Report (2013/14:13)).

The contestation related to the manner in which the trustees of Univen provident Fund distributed the pension benefits of a former member of the fund. On conclusion of its investigation the board of trustees for Univen distributed all the death benefits to the wife of the deceased, with whom they were married in civil marriage and her children to the exclusion of the complainant, TC Khadi, and her minor children born from her relationship with the deceased, regardless of the fact that they were financially dependent on the deceased until his death.

The trustees only considered the legal wife of the deceased whilst not acknowledging and not considering the submissions made by the complainant and Univen that the deceased and the complainant were staying together in a cohabitation relationship in the house that was allocated to the deceased by his employer (Univen) in which they stayed together with their minor children born out-of-wedlock.

During the conference of the Pension Fund Lawyers Association on 02 March 2015, the PFA further indicated what the board needs to do is to investigate and at the end thereof they must have identified dependents and nominees (if any) and their financial circumstances, and it is in these instances that it is always crucial to determine the financial status of the dependents and their maintenance needs as this is what will guide the board in its consideration of the nominee, and that the financial status of each dependent is required to inform the decision making in respect of the maintenance needs of the beneficiaries.

On this case the PFA's role was to determine whether or not the board acted in a fair and equitable manner in the allocation of the death benefits to the identified dependents. Furthermore, it should be noted that the legal wife of the deceased was said to be the sole heir of the estate of the deceased which was estimated to be R2-million.

Finding: the trustees relied on the existence of a civil marriage when distributing the death benefits, and did not consider the fact that the primary purpose of the Pension Funds Act is the protection of the dependents of deceased members of funds during their life time, regardless of marital status. This case bears similarities with the case of Komana Napogadi Merriam versus Samancor Group Provident Fund, PFA/MP/4828/2005/LM/th. Furthermore, the finding is linked to the objective of finding out some of the challenges faced by beneficiaries when interacting with trustees, and that some potential beneficiaries know where to seek help when they are in dispute with a board of trustees.

The beneficiary was a victim of the wrong interpretation of section 37C in relation to the tracing and identification of dependents

4.2.3 Case 2: GJ Radebe of Thokoza versus Metal Industries Provident Fund.

The contestation was related to the payment of death benefits to the wrong person due to a mix-up in names and identity number. Two people shared the same name and ID number. The difference was that one GJ Radebe was a male person who resides in Thokoza, and the other GJ Radebe is a female who resides in Yeoville. The shared ID number was 810114 0704 088 (OPFA Annual Report 2013/14:13)

The above situation resulted in the fund paying the wrong person who claimed to be the deceased's daughter. The complainant had his ID number cancelled and issued with a new ID number by the Department of Home Affairs, which was supported by a letter from the Department of Home Affairs confirming the change of ID numbers for the complainant for the same reason that his first one had a number reserved for females, and that he was re-issued with a new ID number 810114 6006 085.

Finding: the omission on the trustees to verify and authenticate information on two identification numbers with the Department of Home Affairs and residential addresses GJ Radebe and GJ Radebe female. This matter has resemblance to the one involving one of the widows who participated in this study on phase 2 of data collection, whereby someone who shared a surname with her deceased husband presented himself to trustees of Mine Workers Provident fund at Kriel Colliery and claimed part of the death benefits. The trustees paid him R11 000.00 without validating his relationship with the deceased. Trustees only relied on the fact that he shared a surname with the deceased, and claimed without proof that he incurred the costs of burying the deceased.

David (2012:31) states that the determination of the dependants of a deceased member is an onerous task which exposes a Board to a great deal of risk. A Board is required to identify both legal and factual dependants. These duties clearly place an obligation on the Board when investigating the circle of potential beneficiaries to conduct an investigation which is carried out with diligence (David, 2012:32). Boards appear to be failing when it comes to the actual process of identifying a dependent (David 2012:32).

The challenge facing beneficiaries is the possibility of being omitted due to shoddy Investigations by trustees when tracing and identifying dependents.

4.3. Phase 2: Interviews with widows

For the purpose of answering the research question which reads as “What is the impact of the decisions of pension fund trustees on the socio-economic welfare of pension funds beneficiaries at the Greater Tubatse Municipal area?” The following the following sub-questions were posed to the five widows.

The following questions displayed on the table below were posed to five widows two from Riba Cross village, one from Makgemeng village, one from Moroke village and one from Legabeng village of former members of retirement funds. The aim of the questions were to find out their experiences acquired during their

interaction with pension fund trustees, and how their current lives compare to their previous lives before losing their breadwinners.

This approach of displaying questions against responses was used by Swart (2012:81) in her study on “Fiduciary Responsibility and Responsible Investment: Definitions, Interpretation and Implications for the key Role Players in the Pension Fund Investment Chain”, whereas, the approach of comparing the socio-economic lifestyle of surviving spouses before and after losing spouses was used by Kutsoai and Morck (2012:43) in Accra, Ghana when they wanted to understand the living conditions of surviving widows and orphans prior to and after the death of their husbands and breadwinners, using a table like the one below:

Life prior to losing breadwinner	Life after losing breadwinner

4.3.1 Responses to questions by widows

Table 4.1 Awareness of widows about pension funds trustees

Question 1: When did you become aware about the trustees of pension funds?	
Participant	Response
1	I do not know anything about trustees; it is only today as we speak that I hear the name for the first time (10/02/2016)
2	It was in April 2004 following the death of my husband.
3	I knew trustees after the death of my husband in 1999. But, at first I did not know that they were trustees, to me they were just mine officials.
4	It was after the passing on of my husband who passed on in 1998. But, I did not know that he was a trustee.
5	I knew trustees after the death of my husband in 2002.
Finding: Dependents of pension fund members and or beneficiaries of pension funds only become aware of the existence of pension fund trustees upon losing their breadwinners and to some extent may even not be able to differentiate	

between trustees and employer officials or representatives. Beneficiaries were exposed to trustees after the death of their breadwinners. The objective was to *“find out the challenges facing beneficiaries and their experience of dealing with trustees”*.

On the question of *“how aware are beneficiaries of pension funds of the duties of trustees”*. Beneficiaries were not aware. Waitzer and Sarro (2013:32) stated that enough information must be shared with beneficiaries, so that they can be in a good position to make informed requests.

The time during which beneficiaries become aware of the existence of trustees is a challenge in the sense that it happens during the mourning period of the death of their loved one when dependents are still in a psychological state of shock.

Table 4.2 Experiences expressed by widows on their first encounter with trustees

Question 2: Describe your first encounter with the trustees, what was happening.	
Participant	Response
1	I never had an encounter with trustees.
2	It was not a nice experience as I was told that they did not recognise me as the spouse of the deceased.
3	As I was still mourning the death of my husband, I cannot say much, except that they were giving me forms to complete and asking for copies of IDs, birth certificates and marriage certificate and my bank account.
4	I found him friendly when he was helping me to complete the claim form
5	At first I just saw him as a mine official, not knowing that he was a trustee until my cousin told me. Beyond that I completed forms and submitted all the documents that were requested, and the engagement was just fine.
Finding: Widows dealt with people whose identity was not clear to them. Their	

engagement with the trustees appears to be smoothed by the fact that someone will be getting money at the end of the engagement with the trustees.

Against this background, it should be noted that the FSB undated document titled “Role of Trustees” on page 8 recommends the need to raise understanding of trusteeship, in which others should be taught about the work of trustees and letting others know why the role of trustees is so important.

It further appears as if a dependent can work with trustees to claim death benefits until the end of the claiming process not knowing that he/she was dealing with a trustee.

Challenge to beneficiaries is the lack of knowledge about trustees and their role, whilst the trustees are the people who are making decisions that have impact on the beneficiaries’ socio-economic welfare.

Table 4.3 Opinions and experiences expressed by widows on what they considered to be good during their engagement with trustees.

Question 3: What did you consider to be good during your encounter with the trustees? Briefly explain.	
Participant	Response
1	I cannot say
2	There was nothing good I can think about.
3	I can say they were good because they assisted me to get the monies for my deceased husband
4	He was patient with me.
5	I found them helpful when one is submitting a claim.
<p>Finding: One widow could not say anything as she never met with trustees. The objective was to <i>“find out the challenges facing beneficiaries and their experience of dealing with trustees”</i>.</p> <p>The other widow who was not being recognised could not think of anything good</p>	

during her engagement with the trustees.

In this situation it is not clear what informed the trustees not to recognise the widow, because David (2012:31) states that a board of trustees is required to identify both legal and factual dependents. David (2012:31) further states that the determination of the dependents of a deceased member is an onerous task which exposes a board to a great deal of risk. This is further underpinned by the matter between Merriam Napogadi Komana versus Samancor Group Provident Fund, case number PFA/MP/4828/2005/LM/th, whereby the pension funds adjudicator ordered the trustees to correctly fulfil their duty of identifying both the legal and factual dependents of the deceased. Whereas, three widows were satisfied with the engagements they have had with the trustees.

It can be said that one of the challenges faced by beneficiaries is that trustees can subjectively choose to ignore a claimant without considering the claimant's submission to prove dependency on the deceased member. According to David (2012:27), Section 37C tasks the Board of trustees to do the following:

“ To determine the potential beneficiaries to be considered in the distribution, that is, those persons who satisfy the definition of dependent in relation to the deceased member

During the same conference of the Pension Fund Lawyers Association on 02 March 2015, the PFA indicated that the board needs to investigate and at the end must have identified dependents and nominees (if any) and their financial circumstances. In these instances it is always crucial to determine the financial status of the dependents and their maintenance needs as this is what will guide the board in its consideration of the nominee, and that the financial status of each dependent is required to determine the reasonable maintenance needs of the beneficiaries.

The challenges facing beneficiaries is the refusal by trustees to recognise them for consideration when fulfilling their task of tracing and verifying dependents, and

not being identified at all like the widow who lost a breadwinner, but still could not get an opportunity to present herself as a beneficiary and the trustees equally could not trace her regardless of the fact that she was living in the same apartment with the member at the time of his death.

Table 4.4 Opinions and experiences expressed by widows on what they considered to be bad during their engagement with trustees

Question 4: What did you consider to be bad during your encounter with the trustees? Briefly explain.	
Participant	Response
1	I cannot say
2	It was when they were not willing to listen to me and kept ignoring all the evidence I submitted proof that the deceased was my spouse and he paid <i>lobola</i> to my family.
3	I was not told how much money I will be getting, except that I will get money for me and my children
4	He did not want to tell me how much was payable to me. Secondly, my children were not allocated anything and he told me that my husband did not nominate them as his dependents.
5	It was when he did not want to tell me how much I was claiming, and when it will be paid to me.
<p>Finding: The responses indicated that three widows had the same concern of not knowing the amounts that were being claimed or what would be payable to them as dependents and beneficiaries. The objective was to <i>“find out the challenges facing beneficiaries and their experience of dealing with trustees”</i>.</p> <p>FSB Circular PF No 98 (2001:5) states “the board of trustees has to ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund”. Mhango (2010:186) stated that a dependent relative to fund members refers to:</p>	

“A person in respect of whom the member is legally liable for maintenance”.

Whilst acknowledging the rights of the beneficiaries; Chowdhury (2014:389) supported the notion of trustees being under no obligation to give reasons to the beneficiaries for having taken a certain decision. Supposedly including a decision to recognise or misrecognise beneficiaries and what informed the allocation of death benefits. It is probably against this background that trustees in South Africa may be of the view that they do not owe any explanation to the beneficiaries on how a certain decision had been arrived at regarding payment or non-payment of death benefits due for distribution.

Whilst acknowledging that in a fiduciary relationship, the ultimate decision-making authority should rest with the trustees alone, Waiter and Sarro (2013:32) stated that it does not mean that a fiduciary cannot consult with beneficiaries as part of its decision-making process, and for that reason, makes an appeal to legislate “duty to consult” fund members before trustees take actions that affect members’ interests.

Financial planning for future socio-economic life can be difficult in the absence of non-disclosure by trustees to beneficiaries regarding the amounts due to beneficiaries.

Table 4.5 Waiting periods before widows could receive their death benefits and the status of their family life during the waiting period

Question 5: How long did you wait before receiving your death benefits, and how was your life and that of your dependents during the waiting period?	
Participant	Response
1	I did not know that I have to receive any money; no one told me anything from his place of work or his parents. Lastly, I do not know who received his monies
2	I waited for nine years. My complaint was at the OPFA. I was paid in 2013
3	I waited for two months, life was difficult because there was no income and I did not know where our next meal will come from, and my children were not receiving child grant support.
4	I waited for two months, and during the waiting period life was tough, as I was also a university student with no income.
5	I cannot remember, maybe four or five months.
<p>Finding: The responses of three widows indicate that the waiting period for their claims to be paid out was in the range of two to five months, with the exception of one widow who waited for nine years before she could be paid an equitable share of her death benefits.</p> <p>The trustees made the payments within the twelve months' period, which Mhango and Dyani (2009:144) referred to as the period within which trustees should have finished tracing all the dependents of the member. The exception was for one widow who had to wait for nine years before she could be assisted by the intervention of the office of the pension funds' adjudicator.</p> <p>The situation of this widow is similar to the one which was reported in the <i>Sowetan</i> article titled "Widow's 14-year wait period" by Thuli Zungu dated 04 March (2015:4), reported about Giyani-based widow and her two children have been living in abject poverty for the past 14 years, yet they had almost R500 000.00 sitting in government coffers in the GEPF. The answers to the question</p>	

indicated that one of the challenges facing beneficiaries is the long wait before receiving death benefits.

The long waiting period not knowing when one will finally get his/her share of death benefits is a challenge. One of the objectives was *“to find challenges facing beneficiaries and their experiences of dealing with trustees”*.

Table 4.6 The socio-economic lifestyle of widows prior to losing their bread winners versus their lifestyles after losing their breadwinners

Questions 6: How do you compare your life prior to losing your breadwinner, and after losing your breadwinner?	
Life prior to losing breadwinner (Respondent 1) Ga Mathipa village	Life after losing bread-winner
He was providing for us food, clothes, and we stayed together in a rented accommodation	I had to go back to my parents' house and rely on them and my siblings to raise my son.
He was paying day-care costs for our son and my fees at nursing college	I dropped out of nursing college.
We afforded to go to the Dr whenever we were sick	Now we go to public clinic and we do not get medicine most of the time
I never thought of registering our son for child support grant.	In order to survive, I registered my son for a child support grant.
Life prior to losing breadwinner (Respondent 2) Riba Cross Ga Madiseng	Life after losing bread-winner

<p>He built us a house and provided food, clothes and other basic needs</p> <p>We had a family vehicle to travel conveniently</p> <p>He was taking us to a Dr when we were sick.</p> <p>I resigned from work to raise our young children because there was a provider.</p>	<p>We lost the support on basic needs, food and clothes</p> <p>We lost the family vehicle during the accident that took his life, now travelling is a challenge using taxis</p> <p>When one of us is sick we go to public clinic which most of the time does not have medication</p> <p>I went back to my previous employer to beg for my old job at a local butchery and registered my two young children for child support grant</p>
<p>Life prior to losing breadwinner (Respondent 3) Makgemeng village</p>	<p>Life after losing breadwinner</p>
<p>He provided us with company accommodation, food and clothes.</p> <p>He would take us to the Dr when someone was sick</p> <p>I was back at school doing Grade 11, hoping to complete Grade 12.</p>	<p>We lost the shelter (housing) as we were told to vacate the mine's house within three months. We came back to Limpopo Province and started life in a corrugated shack with the R6 789.20 which was allocated to me.</p> <p>When one of us is sick we go to local clinic and there is no medication.</p> <p>I dropped out of school and started and started fending for my children</p>
<p>Life prior to losing breadwinner</p>	<p>Life after losing breadwinner</p>

<p>(Respondent 4) Mecklenburg</p>	
<p>Life was very good and promising because we had all the basic needs for the family.</p> <p>He was paying for my university fees.</p> <p>He was taking care of the children, as I was studying far from home.</p> <p>We afforded to consult the Dr when we were sick.</p>	<p>Life was difficult without income, as I could not provide the basic needs for my family.</p> <p>I relied on TEFSA (Tertiary Education Fund of South Africa) to pay my university fees.</p> <p>I requested someone to look after my children when I was at the university and pay the person.</p> <p>We go to public clinic knowing that we will not get medication.</p>
<p>Life prior to losing breadwinner (Respondent 5) Riba Cross, Mandela Ext 1</p>	<p>Life after losing breadwinner</p>
<p>He was looking after us and providing for our food, clothes and education.</p> <p>We had a family car to travel with.</p> <p>He would buy cake and ice-cream for our birthdays.</p> <p>He would take us to the Dr when sick.</p>	<p>Life is difficult we are not affording basic needs; we depend on monthly payment from Fair Heads Umbrella Trust for my children less than 22 years of age.</p> <p>We travel on taxis.</p> <p>No more cakes and ice-cream, unless a relative donates out of free will.</p> <p>When we are sick we just pray, going to public clinic is not helping, no medicine is available.</p>

Finding: The responses of the five widows show similarities in their family lifestyles prior to losing their bread-winners in terms of access to their family's basic needs such as food, clothes, shelter, and access to medical care. Life after death of bread-winners resulted in dependency on a child grant support system from the South African Social Security Agency, and the forfeiture of access to doctors' surgeries and reliance on public health care facilities with no choice. The objective was *"to find out the nature of changes in lifestyle of widows before versus after losing their breadwinners"*.

Out of the three widows who were studying, one dropped out of nursing college following the death of her fiancé, one widow dropped out of Grade 11 after the death of her husband, and one successfully completed her degree studies at university with the assistance of TEFSA after the death of her husband.

Two widows lost their shelter following the loss of their spouses, whilst two widows lost the privilege of having a family vehicle and went back to the use of public transport.

This approach was also used by Kutsoati and Morck (2012:43) in Accra, Ghana when they wanted to understand the living conditions of surviving widows and orphans prior to and after the death of their husbands or breadwinners. The responses point to another challenge as a change in lifestyle from better to worse before and after losing their breadwinners.

Therefore, the challenge facing beneficiaries is the likelihood of a drop in quality of life.

Table 4.7 Answers from widows who did not receive death benefits or did not get any explanation why they could not get a share of the death benefits

Question 7: In the event you did not receive any death benefit following the death of your spouse, did you get any explanation for not being allocated part of the death benefits left by your deceased spouse, and what did you do thereafter to try and get a share of the death benefits?	
Participant	Response
1	Like I said before, I did not get any money. Maybe it is because we were not yet officially married, and whoever represented his family at his work told the employer that the deceased was not married.
2	At least I was paid, even though it was after a long time through the assistance of the PFA.
3	Part of my benefits was defrauded by a distant family member of my husband (R11 000.00) who identified himself as the one who buried my husband and paid off his account at Bears Furnishers, Kriel. Mine officials or those trustees told me to engage a lawyer in order to get my money from the distant relative. I engaged Mtshali Attorneys, but nothing happened. I rested myself from stress by not doing anything anymore. Lastly, I was given a letter indicating that R56 000.00 has been set aside for a trust to be set up for my three children under Mercantile Asset Trust Company, and once the trust has been set, I will be informed in writing. Since 1999 to this end I am still waiting for the letter, and lately, I was informed that the money is part of the monies that disappeared under Fidentia.
4	My only worry was that my children were not allocated anything, and I did nothing.
5	My only concern was when the trustees refused to reconsider the allocations they made to some children who were not dependents of my husband during the last days of his life. But, with the assistance of the pension funds adjudicator, the trustees finally agreed to reverse their earlier decision and redistributed the death benefits according to my request.

Finding The responses show that two widows sought the assistance of the pension funds adjudicator in order to win their battles against trustees. The widow who engaged the services of a private lawyer for intervention did not achieve her desired outcome. Although one widow was concerned that her minor children were not allocated death benefits of their father, she did not do anything. The objective was to find out *“where do beneficiaries seek help in the event of a dispute with trustees”*

It is against this background that Nevondwe and Odeku (2013:818) refer to the PFA “as a specialist tribunal that aspires to be a respected institution that makes binding and final determinations with regard to pensions to fund complaints submitted in terms of the Pension Funds Act, 24 of 1956”.

Whilst, one widow whose portion of death benefits of R11 000.00 was paid to the wrong person, engaged the services of an attorney in an effort to recover her money, and still could not achieve her desired outcome with the attorney.

The R11 000.00, which was paid to the wrong person was contrary to any of the six modes of payment of death benefits that Mhango and Dyani (2009:145) alluded to, and in particular the fifth mode which points to ‘payment to a person recognised in law or appointed by a court as the person who is legally responsible for managing the affairs of a beneficiary or meeting his or her daily care needs. Besides, the trustees did not make any effort to assist the widow to recover her money from the fraudster’

One of the challenges facing beneficiaries is not getting proper explanations from trustees, and dealing with trustees who cannot own up to their mistakes and leave it to beneficiaries to fend for themselves, like the widow who lost R11 000.00 which trustees paid to the wrong person. In addition, some beneficiaries do not know where to seek help in the event of a dispute with trustees.

Table 4.8: Lessons learnt by widows during their encounter with trustees

Question 8: What lessons have you learned from your encounter with the trustee?	
Participant	Response
1	I did not learn anything.
2	I do not think I can trust those people anymore the way they treated me.
3	They can help you to claim money, but when they pay the wrong person they do not help you to reclaim the money, you are on your own.
4	I cannot say, except that how possible that the biological children of my husband cannot be allocated anything and the trustees failed to convince me.
5	They are difficult to engage when you are not happy with their decisions.
<p>Finding: The responses of four widows do not inspire confidence in trustees by those looking to trustees for assistance during trying times in their lives, and the responses portray trustees as difficult persons. The objective was <i>“to find challenges facing beneficiaries and their experiences of dealing with trustees”</i>.</p> <p>Waitzer & Sarro (2013:30) stated that trustees should be seen to be caring towards the fund’s beneficiaries, in line with a fiduciary’s duty to care for the beneficiaries. Some of the challenges faced by beneficiaries are uncaring trustees who are not willing to educate beneficiaries and trustees who are not giving beneficiaries a voice. Waitzer and Sarro (2013:32) are of the view that giving beneficiaries a voice will help trustees in fulfilling their duty of loyalty and caring through an improved understanding and knowledge of the interests of beneficiaries, this would in turn assist beneficiaries in making informed decisions on matters affecting their interests.</p>	

4.4 Phase 3: interviews with ex-members of funds

4.4.1 Responses by former members of pension funds

The following questions were asked of four retired members of retirement funds in order to answer the research question: They consisted of two retired members from Motloulela village, one from Tukakgomo village and one from Bothashoek village, all in Greater Tubatse Municipal area:

Table 4.9: Answers of the retired members of retirement funds on whether they knew about their retirement packages

Question 1: Prior to your retirement did you know what you were entitled to as your retirement package?	
Participant	Response
1	It was written on a letter from the mine office, which is how I got to know.
2	I knew everything because I once served as a shop steward and trustee as well, and I knew who to go to for any clarity I needed. Apart from that it was in writing.
3	I was informed in writing; it was written in English I did not understand it well; what mattered the most was that I will get my money.
4	I received a letter from HR office showing my retirement package, yes, I can say I knew.
<p>Finding: the responses from the four retired members indicate that communication is in writing and members retire knowing how much they are entitled to receive. There was also a problem of the language barrier. The objective was <i>“to find challenges facing beneficiaries and their experience of dealing with trustees”</i>. However, it emerged that former members only communicate with their Human Resource Departments regarding their pension benefits and pay-outs, not with trustees.</p>	

FSB Circular PF No 98 (2001:5) states that trustees have to ensure "... adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund". It is against this background, the funds are doing well in this regard. Indeed, it is crucial for one to have all the financial information so that informed decisions can be made. The indication is that retired members do not have a problem of knowing what is due to them when they retire.

The challenge facing former members is that although trustees were representing them with regard to their respective funds, they were not available to assist when there was a language barrier problem.

Table 4.10: How the retired members knew about their retirement packages

Question 2: How did you know?	
Participant	Response
1	It was written like I said earlier.
2	Like I said before, that I knew many things because I served as employee rep, as a shop steward and as a trustee.
3	It was written in English as I said before.
4	As I indicated before, it was in writing.
<p>Finding: Boards of trustees appear to be communicating with their members and beneficiaries. The objective was <i>"to find challenges facing beneficiaries and their experience of dealing with trustees"</i>.</p> <p>Below are the duties of the board of trustees for pension funds as stated in Circular PF 130 (2001:6) that :</p> <p>" the board of trustees has an obligation of making sure that sufficient and relevant information is made available to fund member and beneficiaries regarding their rights, benefits and duties as stipulated in the fund's rules"</p>	

In addition, Waitzer and Sarro (2013:32) stated that enough information must be shared with beneficiaries, so that they can be in a good position to make informed requests. It is shows that retired members do not have any challenge regarding access to information about their retirement benefits.

It can be said with certainty that former members do not have a problem of accessing information about their retirement benefits.

Table 4.11: Waiting periods for retired members before they could receive their pension benefits

Question 3: How long did you wait before receiving your pension benefits, and how was your life and that of your dependents during the waiting period?	
Participant	Response
1	It did not take long.
2	It was not a month before I received my retirement package.
3	I did not wait long time.
4	It was paid within a month, as I still continue working, though I passed 60 years of age.
<p>Finding: The responses herewith from all the retired members point to fact that they received their payments before they could start thinking of doing a follow up. The objective was <i>“to find challenges facing beneficiaries and their experience of dealing with trustees”</i>.</p> <p>Literature is silent on the waiting period regarding payment of retirement benefits to former members.</p> <p>The indication is that retired members do not wait for long period to receive their retirement benefits.</p>	

Table 4.12: Answers of retired members on whether they had queries regarding their retirement benefits

Question 4: Did you have any questions regarding your retirement benefits? If your answer is yes, did you receive a satisfactory answer?	
Participant	Response
1	Yes, but there was no one to help me. I wanted to know what informed the lump sum which was paid to me.
2	I never had burning questions, but I got answers to all my questions that needed clarity.
3	Yes, I had a question as I was not sure whether my service with LAVINO SA was taken into consideration when deciding on my retirement package. I worked for LAVINO SA before Samancor bought our mine. No one told me how my money was calculated between LAVINO and Samancor.
4	Yes, I did have a question which was unfortunately not answered to my satisfaction. I was concerned as it appeared as if my ten years' loyal service was not considered.
<p>Finding: The responses of three retired members show that there were elements of uncertainty on their retirement packages which needed some clarity, with the exception of one retired member who is a former trustee. The objective was <i>“to find challenges facing beneficiaries and their experience of dealing with trustees”</i>. The indication is that their concerns were not clarified..</p> <p>FSB Circular PF No 98 (2001:6), which stated that “trustees should pay due regard to information needs of the members concerned and communicate relevant meaningful information in timely and comprehensive manner to enable members to make balanced and informed decisions”.</p> <p>Furthermore, the FSB Circular PF No 98 (2001:3) states that “the board should not only have the interest of active members at heart, but also those of pensioners, deferred pensioners and beneficiaries, and that the board should</p>	

ensure that no individual or group of members is favoured at the expense of other members, and that all are treated fairly”. Here it shows that retired members are faced with a challenge of not getting feedback on their queries and concerns if any on their retirement benefits.

The challenge facing former members is the unavailability of trustees to clear some of their queries which their HR departments could not clarify to their satisfaction.

Table 4.13: What the retired members did after not receiving satisfactory answers to their queries

Question 5: If your answer is NO to question 4, what did you do thereafter?	
Participant	Response
1	What more can I do, if there was no one willing to listen.
2	Nothing was said to this question, as the member was happy with everything related to his retirement package.
3	I was not alone, we engaged a lawyer who disappeared without helping us. Alone I engaged the services of another Phalaborwa based lawyer who also did not help. Thereafter, I decided to leave this matter.
4	There was nothing to do as I did not want to appear to talk too much because I was going to continue working beyond my retirement age.
<p>Finding: The responses of two retired members indicate that they did not have options to follow that could assist them to get clarity on their concerns. One retired member who is a former trustee had nothing to say to the question, as he was the only one of the four who was happy. One retired member had engaged the services of two different lawyers, one was a group lawyer and one was his own choice, and both lawyers did not assist the retired member to achieve his</p>	

desired outcome. The objective was to “*find out where beneficiaries seek help in the event of a dispute with trustees*”.

The situation indicates that retired members appear to be vulnerable, perhaps with the exception of anyone who had the privilege of serving as trustees during their employment time. The OPFA Annual Report (2013/14:6) points to the existence of fractious relationships between employers and members of pension funds upon termination of service, complainants often citing verbal responses received from uncooperative funds and administrators.

According to Nevondwe and Odeku (2013:818) PFA is “ a specialist tribunal that aspires to be a respected institution, that makes binding and final determinations in pension fund complaints submitted in terms of the Pension Funds Act, and resolves complaints in terms of the Act to uphold the integrity of the pension fund industry and to protect the interests of pension fund members”.

The challenge faced by former members is that those without money cannot afford to engage the services of lawyers. Furthermore it looked like the retired members were not aware that the OPFA is available to assist them free of charge.

Table 4.14: How the socio-economic lives of retired members were affected

Question 6: How did this affect your socio-economic life?	
Participant	Response
1	Sometimes when I cannot afford to buy something I used to think maybe I still have money lying somewhere which can help me to afford what I want to buy.
2	I cannot say anything negative as I was prepared for retirement.
3	All I know is that I should get money which was underpaid when we received monies from our provident surplus funds; in fact I share a name and surname, that is where part of money was paid to that

	person. They promised to sort it out.
4	It feels like I was robbed, and this makes me worry.
<p>Finding: With the exception of the former trustee, all other retired members showed some elements of dissatisfaction with the retirement payments they received. The objective was <i>“to find out the challenges facing former members as beneficiaries of pension funds”</i>.</p> <p>The indication herewith is that these members will never have peace of mind, unless something can be done to clear up their concerns, by explaining how their retirement packages were determined or calculated, and what informed the calculations.</p> <p>Respondent 1 was clear to indicate that when he cannot afford something, he felt like it is happening because part of his money is somewhere else. Participant 3 understood that his share from the provident surplus funds is negatively affecting his socio-economic life. Participant 4 is of the view that he was robbed of his retirement package. The impact of the unclear pension benefits to the retired members is likely to have long- term negative psychological effect on their well-being.</p> <p>Lloyd-Sherlock and Agrawal (2014:1571) state that by meeting older people’s economic needs, pensions are an effective means which seek to enhance other aspects of their well-being, including their health status. Lloyd-Sherlock and Agrawal (2014:1572) further state that a number of studies have been conducted in South Africa in the Langeberg Health District in the Western Cape, and these studies indicate that pensions can have a significant effect on older people’s health status.</p> <p>The challenge facing former members was found to be a lack of peace of mind which can lead to the deterioration of their health status.</p>	

Table 4.15: Institutions or persons retired members approached for assistance

Question 7: In the event you sought intervention or assistance, who or which institution did you seek assistance from?	
Participant	Response
1	I wish I had money to engage the services of a lawyer to assist me so that I can know if all my monies were paid correctly.
2	There was no need to do anything.
3	Like I said before, I paid lawyers all of whom did not help me.
4	I did not seek help as I did not have the money to pay a lawyer to assist me.
<p>Finding: with the exception of the former trustee, the responses point to retired members relying on the services of lawyers when not satisfied with the payments or explanations related to their retirement benefits. The objective was to <i>“find out where former members as beneficiaries seek help when not happy with their pension benefit pay-outs”</i>.</p> <p>According to Nevondwe and Odeku (2013:818) the PFA is “ a specialist tribunal that aspires to be a respected institution, that makes binding and final determinations in pension fund complaints submitted in terms of the Pension Funds Act, and resolves complaints in terms of the Act to uphold the integrity of the pension fund industry and to protect the interests of pension fund members”. Nevondwae and Odeku (2013:818) also stated that the mandate of the PFA is the disposal of complaints lodged in terms of Section 30D of the Pension Funds Act 24 of 1956 in a procedurally fair, economical and expeditious manner, by ensuring that its services are accessible to all.</p> <p>The challenge faced here is that those without money cannot afford to engage the services of lawyers. Secondly, engaging lawyers seems not to be working to the benefit of the former members, like it did not work for one widow who did engage the services of a lawyer without any positive results. Another challenge</p>	

facing the retired members compared to that of the widows is that no one seemed to know about the OPFA. One possible reason could be that the OPFA is centralised in Gauteng.

Table 4.16: Outcomes to the assistance sought by the retired members

Question 8: What was the outcome from the assistance you sought?	
Participant	Response
1	The participant could not answer the question as it was not applicable to his situation.
2	The participant could not answer the question as it was not applicable to his situation.
3	Lawyers did not help.
4	There was no outcome as the participant never sought assistance.
<p>Finding: It was found that none of the participants who had engaged the services of a lawyer in pursuit of answers related to their pension or death benefits achieved the desired results. Out of the four former members, only participant 3 had engaged the services of two different lawyers, and both lawyers did not assist the participant, like it happened with one of the participating widows in this study. The objective was to <i>“find out the challenges facing former members as beneficiaries”</i>.</p> <p>It seems that beneficiaries are losing money to lawyers because trustees’ actions and behaviour are contrary to Waitzer & Sarro (2013:30) who stated that trustees should be seen to be caring towards the fund’s beneficiaries, in line with a fiduciary duty to care for the beneficiaries. Furthermore, Waitzer and Sarro (2013:32) are of the view that giving beneficiaries a voice will help trustees in fulfilling their duty of loyalty and caring through an improved understanding and knowledge of the interests of beneficiaries. This would assist beneficiaries in making informed decisions on matters affecting their interests.</p> <p>The challenge faced by beneficiaries is that private lawyers seem not to be of any</p>	

assistance in matters related to pension fund disputes.

Table 4.17: Advice that retired members can give to someone who is about to retire

Question 9: What advice can you give to someone who is about to retire in the next six months, so that the person does not go through the same experience you went through?	
Participant	Response
1	I am not sure how to advise, but I can tell the person to expect disappointment, it is like no one cares because you are leaving the mine.
2	Since I did not have any bad experience, the advice I can give is that people should prepare for their retirement and ask questions about anything they do not understand.
3	To get someone educated who can assist them to read these letters written in English and not to trust lawyers who cannot assist.
4	To be prepared for disappointment, because no one seems to care about you once you reach retirement age.
<p>Finding: Only participant 2 insisted that one should ask as many questions as possible for anything one does not understand. All the other three participants are likely to give discouraging and hopeless advice to anyone who is about to retire. It was also found that trustees have no direct role to play when fund members are at the exit stage, since there was no reference to any contact with trustees during the course of former members' frustrations and answered concerns. The objective was <i>"to find out a challenge facing members who are retiring soon"</i>.</p> <p>According to Girdwood (2013:3) good governance of pension funds and trustees and fiduciary duties remain at the heart of trustees' role, responsibilities and legal obligations and stated that trustees are expected to act in the best interests of current and future members of the pension fund. Furthermore Girdwood (2013:5), stated that it is a fundamental principle of law that trustees as fiduciaries must at all times, act with the utmost good faith and in the best interests of the pension</p>	

fund and its beneficiaries (present and future) and with a degree of prudence, care and diligence. It is further stated that trustees have a fiduciary duty to act in the best interests of beneficiaries, whose benefits depend on the responsible management of fund assets.

Waitzer and Sarro (2013:32) are of the view that giving beneficiaries a voice will help trustees in fulfilling their duty of loyalty and caring through an improved understanding and knowledge of the interests of beneficiaries. This would in turn assist beneficiaries in making informed decisions on matters affecting their interests.

Unless trustees fulfil their duty to inform and educate beneficiaries, the challenge ahead facing members who are retiring soon will be that there will be no trustees to give them a them a voice in the event they have queries and uncertainties on their pension pay-out benefits.

4.5 Phase 4: Focus group discussion with funds trustees

A facilitated focus group of provident fund trustees discussed the following topics; in an effort to understand the find out whether trustees are aware and understand the impact of their decisions on how to distribute death benefits in terms of Section 37 of the Act, and the investment decision they make for their funds on behalf of beneficiaries how they impact on socio-economic welfare of pension funds beneficiaries. The following topics were tabled for discussion with a focus group of trustees:

The following questions were posed to four retired members of retirement funds:

4.5.1 Consensual responses to topics by trustees

Table 4.18: Trustees of funds at the Greater Tubatse Municipality

Question 1: Which provident fund / pension fund are you serving here in Greater Tubatse Municipality?	
Trustees	Affiliation
Trustee 1	Fund 1
Trustee 2	Fund 2
Trustee 3	Fund 3
Trustee 4	Fund 4
Finding: The four trustees constituting the focus group were coming from four pension fund schemes with members in four different mining companies operating in Greater Tubatse Municipality. <i>This was an introductory question.</i>	

Table 4.19: What trustees consider being a challenge when serving as a trustee?

Topic 2: What do you consider to be challenging when serving as a trustee?	
Trustees	Consensual answer
Trustee 1	All trustees indicate that their biggest challenge is when they fail unintentionally to comply with the requirements of the Act, when allocating pension benefits to beneficiaries due to an oversight on something they did not think was very important for consideration. Like a failure to prove dependency or non-dependency on the deceased by a claimant. Lastly, the trustees mentioned that another serious challenge they face is when the employer refuses to grant them time off to go out to do their work when there is a need for field work to be done.
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group indicated that their challenge is when they unintentionally fail to act according the requirements of Section 37C, as prescribed by the governing legislation to prove dependency or non-dependency of a claimant, when distributing death benefits. The second great challenge is when the employer refuses them time off to go out and do their field work related to their responsibility as trustees, especially to do investigations pertaining to the claims of death benefits. The objective was <i>“to determine whether trustees are aware of the impact of their decisions on the socio-economic welfare of beneficiaries in Greater Tubatse Municipal area”</i>.</p> <p>The following two cases corroborate the trustees’ view:</p> <p>The matter between Emily Mampoto Maphanga Versus Anglo Group Provident Fund, Case number PFA/MP/1425/2004 and Merriam Napogadi Komana Versus Samancor Group Provident Fund, Case number PFA/MP/4828/2005/LM/th points to some weaknesses in the investigations of trustees in determining dependency and non-dependency on the deceased.</p> <p>During a presentation to Pension Funds Lawyers at Misty Hills, Johannesburg on 05 March 2013, Nevondwe indicated that trustees are confronted with many difficult decisions on a regular basis and are required to have knowledge and</p>	

understanding of the legal framework in which they operate as well as the rights of the members under that particular legal framework.

During the same conference of the Pension Fund Lawyers Association on 02 March 2015, the PFA further indicated that what the board needs to do is to investigate and at the end thereof they must have identified dependents and nominees (if any) and their financial circumstances, and it is in these instances that it is always crucial to determine the financial status of the dependents and their maintenance needs as this is what will guide the board in its consideration of the nominee, and that the financial status of each dependent is required to determine the reasonable maintenance needs of the beneficiaries.

According to David (2012:27), Section 37C tasks the Board of trustees to do the following:

- “To determine the potential beneficiaries to be considered in the distribution, that is, those persons who satisfy the definition of dependant in relation to the deceased member, inclusive of other persons who may have been nominated by the deceased member as his / her preferred recipients of the death benefit.

The challenge faced by beneficiaries is the unintentional omission on the side of the trustees when they fail to act according to the requirements of section 37C when proving dependency or non-dependency of a claimant. However, the hindering factor to the trustees was found to be when the employer refuses to grant them time off to go out to do their work when there is a need for field work to be done by a trustee.

Table 4.20: What trustees consider being an advantage to serve as a trustee?

Topic 3: What do you consider to be the advantage of serving as a trustee?	
Trustees	Consensual response
Trustee 1	All trustees concur that the advantage of serving as a trustee is that you have a say in the selection and appointment of fund managers and also to remove non-performing managers.
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group appeared to be comfortable with the fact that as trustees they can influence the selection and appointment of fund managers and to remove non-performing fund managers. The objective was <i>“to determine whether trustees are aware of the impact of their decisions on the socio-economic welfare of beneficiaries in Greater Tubatse Municipal area”</i>.</p> <p>This is aligned to one of the responsibilities of trustees as stated on page 7 in FSB undated document titled “Role of Trustees”. This was further corroborated on page 8 in FSB undated document titled <i>“Role of Trustees”</i> which stated that trustees should keep a close watch over administrators to ensure members’ assets are managed properly according to the law.</p>	

Table 4.21: Available support system to assist trustees to discharge their duties

Topic 4: What kind of support system is available to assist you in discharging your duties as trustees?	
Trustees	Consensual response
Trustee 1	It emerged that trustees have to provide their employer with their yearly plan, which will also indicate the kind of support which will be required from the employer. All trustees indicated that their employers provide them with logistical support in terms of transport, accommodation and time off to their work as trustee. Furthermore, two trustees indicated that they are given air time once per quarter to be able to make calls for their work as trustees. One trustee
Trustee 2	
Trustee 2	
Trustee 2	

	indicated that they only get air time when there is a case to be dealt with, and another trustee indicated that they use the company's landline phone for communication, and their challenge is when they receive a "please call me" from the widows who want progress feedback on their claims. They use their own personal air time without claiming, and in most cases they choose not to call back until when they are back in the office to call using the company landline phone.
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Finding: The focus group indicated that as a trustee you are required to provide your employer with a yearly programme, and to indicate the kind of support one would require from the employer. The only difference is that two trustees indicated that they are given cellular phone air time once per quarter to execute their duties as trustees. However, they did not disclose the value of the air time. One trustee indicated that he is given air time only when there is a case that he is working on. One trustee indicated that for communication with dependents or beneficiaries they have access to the company landline phone for communication.

Literature is silent about the kind of support that should be given to trustees to perform their trusteeship duty. However, it was mentioned that their employers are providing means of communication and transport when the need arises.

Therefore, one of the challenges facing beneficiaries is that trustees may fail them due to lack of proper and sufficient support from their employers, since their support is at the discretion of the employer.

Table 4.22: Minimum requirements to qualify for election or nomination as a trustee

Topic 5: What are the minimum requirements for one to qualify for election / nomination as a trustee?	
Trustees	Consensual response
Trustee 1	<ul style="list-style-type: none"> • One must not have a criminal record. • The member must be a member of the fund. • One must be honest and trustworthy in terms of keeping secrets. • One must be literate, although currently there is no prescribed minimum academic qualification. • Trade union interests and pressures influence the nomination process; hence one’s level of education is currently not a serious issue.
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group stated that currently there are no formally regulated requirements for one to qualify for election or nomination as a trustee. The above criteria with the exception of one point is confirmed by Steward and Yermo (2008:17) and on page 11 of the FSB undated document titled “Role of Trustees”. However, the trustees did acknowledge that it was brought to their attention that there was an academic curriculum being developed for trustees.</p> <p>Trade union influence and interest, was confirmed by Webster during the 20th Annual Pension Lawyers Association in Johannesburg on 02 March 2015 by indicating that, in 1983, MAWU (forerunner) of NUMSA won the right to sit on the pension fund, followed in 1987 by CWIU winning the right to co-manage the Chemical Industries Pension Fund.</p> <p>Steward and Yermo (2008:17) indicated that some countries like Australia, Finland and Germany prescribed that members of the pension fund board should have certain specific qualifications and professional experience that would allow them to carry out their duties in a professional manner.</p>	

In South Africa, the need for academic qualifications for trustees was emphasised by Hunter, representing the FSB, during the Pension Lawyers Association Seminar in Sandton on 09 October 2014. Hunter indicated at the conference that the FSB has to this end submitted a proposal to SAQA for a National Trustees Qualification for possible approval. Currently, in South Africa there is no evidence to this in the extract from the National Budget Speech of 2013, by the then Finance Minister, Mr Pravin Gordhan, which says “Governance reforms of retirement funds will also be implemented, with measures in place to ensure trustees of retirement funds are trained once they have been appointed. I intend to call up a conference of all trustees this year to take this process forward” (National Budget Speech, 2013:19:

To this end, the challenge facing beneficiaries is that they can be represented and served by unqualified and incompetent trustees, which will in turn lead to blunders and uninformed decision making with undesirable consequences on their socio-economic welfare.

Table 4.23: The understanding of trustees about their trusteeship functions

Topic 6: What is your understanding about the functions of trustees?	
Trustees	Consensual response
Trustee 1	<p>All the trustees indicated that there were common functions which they are always worried about are:</p> <ul style="list-style-type: none"> • To distribute funds fairly and diligently. • To trace dependents as required by Section 37C of the Act. • Not to take sides when deliberating on a matter, but should only consider the facts on the table without fear and favour. • To make binding collective decisions and keeping minutes of meetings. • Manage the risk in terms of monitoring non-performing fund managers.
Trustee 2	
Trustee 3	
Trustee 4	
Finding: The trustees were knowledgeable and conversant about the functions of	

trustees. Nevondwe (2009:42) states that should the fund within 12 months of the death of a member successfully traces dependents of the member, the benefit shall be paid to such dependent as may be deemed equitable by the board, to one of such dependents in proportion to some or all such dependents.

Section 7D of Pension Funds Act No. 24 of 1956 stated that one of the duties of the board shall be to ensure that proper registers, books and records of the operation of the funds are kept, inclusive of minutes of all resolutions passed by the board.

Draft Information Circular of 2015 (p1) reference 12/12/25 provides for the appointment of board members in terms of section 7A of the Pension Funds Act as amended by the Financial Services Laws General Amendment Act, 45 of 2013 which provides for appropriate and effective management of risks.

Incorrect records of information about beneficiaries in the hands of trustees pose a threat to beneficiaries in the sense that the information is misleading, and for that reason locating the beneficiary may be difficult. At worst payment can be made to the wrong person.

Table 4.24: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 7

Topic 7: Are your constituencies aware of your existence, your roles and responsibilities?	
Trustees	Consensual response
Trustee 1	All trustees indicated that their constituencies are aware of their existence due to the nature of the engagements they have at their respective workplaces. One being that they meet with their constituencies once per quarter to give feedback on all meetings that were attended; it is in the same meetings where constituencies give the trustees a mandate. Lastly, the trustees indicated that they
Trustee 2	
Trustee 3	
Trustee 4	

	facilitate engagements between their members and the fund managers, like Old Mutual, Allan Gray and Alexander Forbes.
<p>Finding: The focus group pointed to the existence of engagements between trustees and members of the funds through quarterly meetings, which further point to the sharing of important information on matters of interest to the fund members.</p> <p>FSB undated document titled “<i>Role of Trustees</i>” on page 8; requires trustees to raise understanding of trusteeship by teaching others about the work of trustees and letting others know why the role of trustees is so important.</p> <p>FSB Circular PF No 130 (2007:18) states that communication to members and beneficiaries should be informative, transparent and fair and display accountability, which should be inclusive of information in respect of operations, administration and investments of the fund.</p> <p>Another challenge faced by beneficiaries is that the current format of meetings is not representative of all beneficiaries of funds, in the sense that the quarterly engagements are only limited to active members of the fund, with the exclusion of former members, surviving spouses and other dependents.</p>	

Table 4.25: Shared experience of pension funds trustees as a limitation when discharging their duties

Topic 8: What do you consider to be the limitations when discharging your duties as trustees?	
Trustees	Consensual response
Trustee 1	The trustees’ highlighted dishonesty on the part of members when completing beneficiary nomination forms, non-updating of changes on personal social circumstances, like divorce, marriages and new born babies in the family. Lastly, in the absence of proper documentation and sufficient information, the tracing of beneficiaries becomes challenging and leads to delays to distribute death
Trustee 2	
Trustee 3	
Trustee 4	

	benefits. It was further stated that when the employer's HR department does not introduce the trustee to the bereaved family, the trustee becomes a stranger and does not get full cooperation from the bereaved family, taking into account that the trustee has to decide their financial share.
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Finding: The limitations mentioned emanated from dishonesty on the part of members of the fund when completing beneficiary nomination forms, and their failure to update changes in their social circumstances. All these negatively affect their duty to trace beneficiaries and dependents, and lead to delays in the distribution of death benefits. The *Sowetan* article titled "Widow in pension dispute with nyatsi" by Thuli Zungu dated 26 January 2015, p17 reported on a widow who was in a pension dispute with a *nyatsi* (concubine, Northern Sotho).

The girlfriend was contesting to be the sole beneficiary of death benefits. It further emerged that prior to the death of the fund member, the "*nyatsi*" had fraudulently nominated herself as the sole beneficiary to receive all death benefits in the event of the fund member's death. The "*nyatsi*" was dismissive of the claims that she fraudulently nominated herself as the sole beneficiary, arguing that she followed the deceased member's instructions when completing the form nominating herself as the sole beneficiary.

The other concern was that HR Departments are not introducing trustees to bereaved families and this appears not only to affect trustees, even some of the widows alluded to the same concern in question 1 to the widows; participant 1 & 2 saw the trustees as mine officials or employer representatives. In question 7, widow three indicated that she lodged a complaint to someone whose identity was not clear to her whether he was a mine official or trustee when she was defrauded of part of her death benefits.

Another challenge facing dependents is regarding the authenticity of the information available to trustees from other potential dependents

Table 4.26: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 9.

Topic 9: What comes to your mind as a trustee when it takes you longer than twelve months to pay out death benefits?	
Trustees	Consensual response
Trustee 1	<p>All trustees concurred that:</p> <ul style="list-style-type: none"> • One has to communicate extensively with all the stakeholders. • Keep the family informed about the latest developments. • Revisit the accuracy of the information supplied to the fund manager. • One has to interrogate the reliability of the information at hand, because most of the time the delays to make payment are a result of insufficient and unreliable information.
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group hinted at the importance of communication with all the stakeholders, and keeping the affected family updated on the latest developments. Most important is that the available information is either insufficient or unreliable. It would be best for the trustees to take their time to establish all the facts, verify and test the facts than to rush to close the file.</p> <p>According Nevondwe (2009:41) “the board has 12 months within which to trace and identify the possible beneficiaries that might share in the death benefit”. However, he further states that “there is no duty on the board to make payment after the 12 months have lapsed, if the board is of the opinion that there is a need for further investigation”.</p> <p>The challenge for the delay to the beneficiaries will be a delayed payment or distribution of death benefits which will negatively affect their socio-economic welfare.</p>	

Table 4.27: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 10.

<p>Topic 10: What kind of advice do you give to your fund members who are involved in dual marriages, civil and customary or members with unfinished divorce cases, but moved into another marriage, what would be the impact of these social changes on the distribution of the pension funds when they have passed on?</p>	
Trustees	Opinion
Trustee 2	<p>The question appeared to be tricky to all trustees, as it sounded like they have to invade the private space of their members. All trustees indicated that it hardly happens, whether in private or in their official capacity as trustees. However, all trustees acknowledged the importance of cautioning their members about the principle of cohabitation, and the possibility that all their partners legitimate or illegitimate will be recognised and considered to receive death benefits as long as they can prove dependency on the member when the person is no more alive.</p>
Trustee 2	
Trustee 2	
Trustee 2	
<p>Finding: The focus group acknowledged with reservations the importance of a forewarning to the fund members, as it was seen to be the invasion of private personal space. The collective response indicated that it hardly happens even in their personal capacity to engage someone who is involved in multiple relationships or in cohabitation set-up. However, Waitzer and Sarro (2013:32) state that trustees have a duty to educate beneficiaries by providing them with enough information.</p> <p>The challenge facing beneficiaries as a result of the reluctance by trustees to invade what they consider to be private personal space, is that beneficiaries are denied a learning opportunity to know what will haunt their dependents in the event the member's death.</p>	

Table 4.28: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 11

Topic 11: What do you consider to be the most challenging and difficult circumstances when deliberating on the allocations to beneficiaries?	
Trustee	Opinion
Trustee 1	<p>It emerged from the engagement that unreliable witnesses during the investigative interviews pose a serious challenge. When the authenticity of supporting documents is questionable and adult beneficiaries who are self-sustainable economically, but still argue for a share where minor children are supposed to take precedence.</p> <p>The trustees further concurred that the needs of a twenty-year-old person and that of a five-year old person will not be the same, and as such a legitimate and reasonable expectation can arise for the board of trustees to view the maintenance needs and circumstances of the two differently leading to a final decision of making equitable distribution of the death benefits</p>
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group mentioned unreliable witnesses during their investigations in tracing dependents of the deceased members as their main challenge. The second challenge was said to be the authenticity of the supporting documents provided by some of the dependents and beneficiaries, and lastly, selfish self-sustainable adult beneficiaries who cannot think about minor dependents, and argue for higher shares on the available death benefits to be distributed.</p> <p>The <i>Sowetan</i> article titled” Widow in pension dispute with nyatsi” by Thuli Zungu dated 26 January 2015, p17 reported on a widow who was in pension dispute with a <i>nyatsi</i> (concubine, Northern Sotho). The girlfriend was contesting to be the sole beneficiary of death benefits. Upon further investigation it emerged that prior to the death of the fund member, the “nyatsi” had fraudulently nominated herself as the sole beneficiary to receive all death benefits in the event of the fund member’s death. The “nyatsi” was dismissive of the claims that she fraudulently</p>	

nominated herself as the sole beneficiary, arguing that she followed the deceased member's instructions when completing the form nominating herself as the sole beneficiary.

During the conference of the Pension Fund Lawyers Association on 02 March 2015, the PFA further indicated what the board needs to do is to investigate the situation and at the end thereof they must have identified dependents and nominees (if any) and their financial circumstances, and it is in these instances that it is always crucial to determine the financial status of the dependents and their maintenance needs as this is what will guide the board in its consideration of the nominee, and that the financial status of each dependent is required to determine the reasonable maintenance needs of the beneficiaries.

The focus group concurs with Nevondwe (2009:43) about "The ages of the beneficiaries", which are very critical for determining the determining the length of time a beneficiary will need to be maintained before becoming self-sustainable.

Fraudulent claims and unreliable witnesses pose a challenge between beneficiaries and dependents.

Table 4.29: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 12.

Topic 12: What do you consider to be the most common bone of contention between trustees and beneficiaries?	
Trustee	Opinion
Trustee 1	The trustees indicated that the common problem they can think of is when there is a contention among family members regarding whether the deceased had a spouse or not, and other families disputing the validity of a marriage regardless of existing evidence that confirms the marriage, and lastly, other beneficiaries trying to disqualify other legitimate beneficiaries and expecting the trustees to
Trustee 2	
Trustee 3	
Trustee 4	

	deviate from the requirements of Section 37C of the Pension Funds Act.
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Finding: The focus group members all agreed to the fact that wherever there is money, opportunists will always attempt to take advantage, and most families do not know or understand that for one to qualify as a beneficiary of a deceased does not depend on the existence of marriage certificate nor approval or recognition by the family of the deceased. As long as one can prove financial dependency on the deceased it is enough to be considered in the distribution of the death benefits.

According to Nevondwe (2009:39) a dependent person relative to a deceased member-means:

“(a) a person in respect of whom the member is legally liable for maintenance;

(b) a person in respect of whom the members is not legally liable for maintenance, provided such person-

- was in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
- is the spouse of the member;
- is the child of the member, including a posthumous child, an adopted child and a child born out of wedlock;
- a person in respect of whom the member would have become liable for maintenance had the member not died”.

The matter between the widow and “nyatsi” in the *Sowetan* article titled” Widow in pension dispute with nyatsi” by Thuli Zungu dated 26 January 2015, p17 reported on a widow who was in a pension dispute with a *nyatsi* (concubine, Northern Sotho). The girlfriend was contesting to be the sole beneficiary of death benefits. Upon further investigation it emerged that prior to the death of the fund member, the “nyatsi” had fraudulently nominated herself as the sole beneficiary to receive all death benefits in the event of the fund member’s death. The “nyatsi” was dismissive of the claims that she fraudulently nominated herself as the sole beneficiary, arguing that she followed the deceased member’s instructions when completing the form nominating herself as the sole beneficiary.

Table 4.30: Shared experience of pension fund trustees at Greater Tubatse Municipality relating to question 13.

Topic 13: What kind of training is offered to address the performance gap of trustees?	
Trustee	Opinion
Trustee 1	The two trustees indicated that they attend all annual pension fund conferences which rotate across the Republic of South Africa with stakeholders like the Pension Funds Adjudicator, the Financial Services Board, Fund Administrators and National Treasury. The conferences serve as a training and information sharing platform.
Trustee 2	
Trustee 3	One trustee indicated that they only have quarterly meetings at their Head Office in Gauteng with their portfolio managers and get feedback on previous cases. Because of financial constraints they do not attend the annual pension funds conference. The quarterly meeting serves to keep the trustees informed about latest developments and any changes in the pension funds industry.
Trustee 4	Other trustees indicated that they attend quarterly board meetings in Johannesburg, and all annual conferences that take place in Gauteng, with the exception of the annual conference in Cape Town. Only the Principal Officer, Deputy Principal Officer and Chairman attend the Cape Town annual conference. The trustees further indicated that they attend a preparatory training course before they can participate in in any of their quarterly board meetings. The fund pays for the training.
<p>Finding: Through comparison, three trustees are more exposed to the Annual Pension Funds Conferences where they engage directly with other pension fund stakeholders, than the one trustee, whose quarterly meetings are only in-house with their direct portfolio managers/ fund at his Gauteng Head Office. Another difference is that only three trustees indicated that they attend a preparatory training course before they can attend each of the quarterly board meetings, which is an indication that other trustees are attending board meetings unprepared, even though FSB Circular PF 130 (2007:7) is calling for such</p>	

preparatory training which is to be carried at the expenses of the fund.

FSB Circular PF 130 (2007:7) also indicated that board member must be continuously informed and knowledgeable about latest developments relating to fund risk management, investment risks, and so forth. Therefore, level of exposure for trustees cannot be the same, and so will be their level of preparedness for the quarterly meetings.

It is against this background that one can indicate that there is a need to have minimum academic requirements for one to qualify as a trustee in South Africa. There is also a need to have a disqualifying criterion for the trustees. The need for academic qualifications for trustees was emphasised by Hunter during the Pension Lawyers Association Seminar in Sandton on 09 October 2014. Hunter indicated at the conference that the FSB has to this end submitted a proposal to the South African Qualifications Authority (SAQA) for National Trustees Qualification for possible approval.

The need for academic qualifications for trustees was emphasised by Hunter during the Pension Lawyers Association Seminar in Sandton on 09 October 2014. Hunter indicated at the conference that the FSB has to this end submitted a proposal to the South African Qualifications Authority (SAQA) for National Trustees Qualification for possible approval.

As a cause for concern Webster indicated on slide 10 of her presentation at the Annual Pension Lawyers Conference on 02 March 2015 in Johannesburg that there is R20 billion in unclaimed benefits, many beneficiaries are not adequately informed by employers, unions and fund administrators that their dependents-including children are entitled to death benefits, and lastly, members are not told that even if they are dismissed they are entitled by law to a prescribed minimum benefit.

This could be attributed to the fact that to this end there is no specific training intervention which is aimed at equipping trustees with the relevant and necessary

skills and knowledge required to function effectively as trustees, and perhaps rationality is lacking in the manner in which trustees deliberate on the issue of unclaimed benefits. Rationally it is supposed to be obvious to trustees that it is their duty to trace and find beneficiaries and dependents, and that someone out there is in need of those unclaimed funds to improve his / her socio-economic welfare.

Lack of formal training of trustees means that some trustees may not be aware that there is R20 billion in unclaimed benefits. Marumoagae (2012:5) stated that section 7D(c) of the Pension Funds Act, 24 of 1956, indicated that the duties of a board is to provide sufficient and reliable information to members of the fund informing them about their rights, benefits and duties in terms of the rules of the fund

The indication is that many beneficiaries are not adequately informed by employers, unions and fund administrators that their dependents - including children can claim either a retirement benefit or death benefits. Lastly the indication is that members are not told that even if they are dismissed they are entitled by law to a prescribed minimum benefit. Although trustees have a duty to inform and educate according to Waitzer and Sarro (2013:32). If trustees are not educated themselves, they will have nothing to inform, share and educate beneficiaries about.

Table 4.31: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 14.

Topic 14: To whom are trustees accountable?	
Trustee	Opinion
Trustee 1	All trustees concurred that they are accountable to the members of the fund.
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: The focus group’s understanding on “<i>who</i>” trustees are accountable to is corroborated by FSB Circular PF No 130 on Good Governance of Retirement Funds (2007:4) which states that board members owe a primary duty to the fund and the members and beneficiaries. The focus group members all concurred that they are accountable to the members of the fund.</p> <p>Based on the experience of former members the indication is that trustees are only accountable to those that they interact with directly. This was corroborated by the consensual response of the focus group to topic 7 above. The consensus was that trustees are interacting with members through quarterly meetings at their respective workplaces.</p> <p>The interpretation in the context of the trustees understanding could be that trustees are accountable to members of the fund only, as the ones who are making financial contributions monthly to the fund. Therefore, trustees cannot be expected to account to someone who is not financially subscribing to the fund</p>	

Table 4.32: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 15.

<p>Topic 15: In situations whereby the Office of the Pension Funds Adjudicator rules against your allocation of death benefits, orders you as trustees to allocate a share to a beneficiary you did not consider earlier, and you have already paid out the money that was available for distribution, where do you get extra funds in order to rectify the situation?</p>	
Trustee	Opinion
Trustee 1	<p>Three trustees mentioned the availability of extra funds made available from insurance covering the risks associated with the duties of trustees related to the application of section 37 C of the Pension Funds Act. One trustee does not know about the existence of an insurance that covers the risks associated with the incorrect application of section 37C of the pension Funds Act by trustees. All he knows is that there is no room for mistakes when trustees have to allocate pension benefits.</p>
Trustee 2	
Trustee 3	
Trustee 4	
<p>Finding: Three focus group members spoke about the existence of insurance that covers the mistakes of trustees. One trustee was not aware about the existence of the insurance. What he knew was that there is no room for mistakes. It showed that trustees are not operating at the same level. Hence the need for uniformity in the training and support given to trustees.</p> <p>On the FSB in an undated document “Role of Trustees” page 19 states that there is protection for trustees, which is provided for by the fund’s fidelity cover and professional indemnity insurance that the FSB insists should be in place. One such situation is in the matter between Merriam Napogadi Komana versus Samancor Group Provident Fund, case No PFA/MP/4828/2005/LM/th. This is one of the disputes which determined after nine years, many years after the trustees had distributed the death benefits, and the fund still complied with the PFA’s determination.</p>	

Table 4.33: Shared experience of pension funds trustees at Greater Tubatse Municipality relating to question 16

Topic 16: What lessons have you learned from your previous engagement with OPFA?	
Trustee	Opinion
Trustee 1	<p>Three trustees had previously engaged with OPFA. The lessons learned are:</p> <ul style="list-style-type: none"> • PFA is impartial in not taking sides. • One has to do his/her work diligently. • Seek advice before deciding on any matter because mistakes are costly, especially when the pension funds adjudicator orders you to start the process again of identifying beneficiaries, and proving dependence and non-dependency of others.
Trustee 2	
Trustee 3	
Trustee 4	One trustee had no previous engagement with PFA.
<p>Finding: Three members of the focus group had an engagement with the PFA whereby complaints were lodged against their decisions on the distribution of death benefits. It is from the engagements that they learned the above mentioned lessons.</p> <p>FSB Circular No 98 (2001:6) states that trustees have a duty to seek and source professional advice on matters where board members may lack sufficient expertise to perform certain duties, like those related to actuarial matters, investment decisions and issues requiring legal advice.</p> <p>According to Nevondwe and Odeku (2013:818) PFA is “ a specialist tribunal that aspires to be a respected institution, that makes binding and final determinations in pension fund complaints submitted in terms of the Pension Funds Act, and resolves complaints in terms of the Act to uphold the integrity of the pension fund industry and to protect the interests of pension fund members”.</p> <p>Trustees are well informed about the duty the expectation of the PFA from trustees. However, regardless of their knowledge trustees seem to be battling to discharge their duties diligently. Literature has pointed to a number of cases</p>	

where trustees were found wanting.

Table 4.34: Shared experience of pension fund trustees at Greater Tubatse Municipality relating to question 17

Topic 17: Regarding the investment of the portion of the death benefits on behalf of minor children, what is your role, and what informs your investment decisions?	
Trustee	Opinion
Trustee 1	<p>All trustees indicated that trustees at their respective organisations consist of three subcommittees which are categorised as follows:</p> <ul style="list-style-type: none"> • Death subcommittee which is responsible for tracing, investigating, making recommendations and distributing death benefits to dependents of a deceased member. Furthermore, it was indicated that the death subcommittee is also responsible for determining the minimum and maximum age limit on which a minor beneficiary can be paid his/her lump sum, with 18 years as the minimum and 23 years as the limit. The determination of the age limit is informed by the socio-economic conditions of minor children. • Investment subcommittee, responsible for identifying potential investment opportunities, potential fund managers, engaging and making recommendations about the preferred fund manager. • Audit subcommittee, which is serving as internal oversight structure responsible for ensuring that the budget of the trustees is used correctly and for the purpose it is prescribed for. <p>It was further indicated that the decisions of each subcommittee are collectively binding to all subcommittees and the entire body of trustees collectively.</p>
Trustee 2	
Trustee 3	
Trustee 4	

Finding: The first indication was that a board of trustees is constituted by three sub-committees, which is also confirmed by the FSB Circular PF 130 on Good Governance of Retirement Funds (2007:7) which shows six sub-committees including the three mentioned by the focus group. It is further stated that each sub-committee should be required to advise the board on risks relating to the functions to be performed by that sub-committee, and the process or controls necessary to mitigate that risk (FSB Circular PF 130 (2007:7)).

Since the focus group members are all serving on the Death sub-committee, they could not deliberate extensively on the topic, except to dwell on the known Fidentia investment scandal, which is also acknowledged by the FSB 2nd Quarter Bulletin (2008:14). Girdwood (2013:15) recommended that the trustees should consider current and anticipated future economic realities when making investment decisions. According to Girdwood (2013:7) a good investment decision should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character.

Luthuli, the Chairperson of Pension Funds Principal Officers Association commented that whatever one's reasons might be for investing responsibly, a retirement fund also needs to be able to do intelligent risk assessments - assessments which will take into account the monetary return on an investment as well as the feasibility of on-going success if a fund continues to invest in a certain way (2013:13).

Chowdhury (2015:387) states that trustees have a duty to invest the trust funds to provide an income for beneficiaries and to maintain or increase the value of the trust. Whilst, Waitzer and Sarro (2013:34) stated that it is through investment that the trustees can be in a position to guarantee the good future well-being of beneficiaries. Therefore, It can be inferred with confidence that in the event of an investment choice of trustees going wrong, it cannot be denied that it is the members and beneficiaries who lose financially and it in turn negatively affects their social well-being. Waitzer and Sarro (2013:29).

On 17 September 2013 during the launch of “Responsible Investment and Ownership: A Guide for Pension Funds in South Africa” in Johannesburg, Ms Hunter said “ *a fund has a fiduciary to act in the best interests of its members whose benefits depend on the responsible management of fund assets, and that this duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn adequate risk adjusted returns suitable for the fund’s specific member profile, liquidity needs and liabilities*”.

The main victims of the Fidentia ’scandal were 46 000 widows and orphans of former mine workers who lost their lives (FSB Bulletin 2nd Quarter, 2008:15). According to FSB Bulletin 2nd Quarter (2008:14) the Mine Workers’ Provident Fund entered into an agreement with the Mercantile Asset Trust Company to invest and administer the benefits of deceased members of the Mine Workers Provident Fund.

The unavailability of a trustee serving on investment sub-committee to participate in the study was a limiting factor, since the topic could not be unpacked in full. The topic was very critical to this study because the investment of retirement funds is aimed at the future socio-economic welfare of beneficiaries. Therefore, it was important to hear from a trustee who serves on a fund’s sub-investment committee.

4.6 Phase 5: Interview with official (Office of the Pension Funds Adjudicator)

4.6.1 Responses from the official: OPFA

Table 4.35: Response to question1

<p>Question 1: How accessible is your office and services to the communities around Greater Tubatse area?</p>	<p>Adjudicator response: Currently our office is centralised here in Gauteng, or clients only communicate with the office of the pension funds adjudicator in</p>
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	writing or through telephone. Basically, I can say our clients outside Gauteng are less privileged than the Gauteng-based clients, since they can walk-in at any given time.
<p>Finding: The response points to limited access to the office of the pension funds adjudicator to those outside Gauteng Province.</p> <p>The challenge facing beneficiaries from Greater Tubatse municipal area is in the accessibility of the OPFA, which is currently located in Pretoria, Gauteng Province.</p>	

Table 4.36: Response to question 2

<p>Question 2: How do you market your services in the Greater Sekhukhune area?</p>	<p>Adjudicator response: We are currently using road shows and distributing pamphlets as our marketing strategy covering as many areas as possible in all nine provinces. It emerges during our road shows that it is clear that the pension funds adjudicator is unknown in most areas outside Gauteng Province</p>
<p>Finding: OPFA makes use of road shows and distribution to market itself covering all nine provinces. To this end, there was one successful road show in Bloemfontein in 2015.</p> <p><i>A New Age (Free State) Article titled "PFA concludes 'successful' road show" by Tshimologo Leeuw, (Free State) 19 February 2015, p3.</i></p> <p>During the researcher's interaction with the widows and the former members there was no indication of anyone knowing anything or mentioning a pamphlet about OPFA, except the two widows who had the privilege of being introduced to OPFA by a relative. Therefore, the challenge is that beneficiaries will continue to</p>	

suffer at the hands of trustees not knowing where to get help.

Table 4.37: Response to question 3

<p>Question 3 What are the most common complaints your office receives from beneficiaries around Greater Tubatse Municipal area?</p>	<p>Adjudicator response: Statistically 75-80% of the complaints we receive are related to withdrawal benefits, whereby members only become aware that they were not registered as contributing members of funds when they retire, resign or change jobs, the most vulnerable members currently are those in the Private Security Industry and Contract Cleaning Services. Secondly, distribution of death benefits is highly contested, whereby in most cases the contesting complainants do not understand or do not know that financial dependency takes precedence over any form of relations to the deceased.</p>
<p>Finding: Trustees are failing to take reasonable steps to ensure that contributions are paid timeously to the fund, in particular the Private Security Industry and Contract Cleaning Services. Secondly, there are contestations relating to distribution of death benefits in line with section 37C of the Act. Thirdly, it has been confirmed that the OPFA is the place in which beneficiaries of pension funds seek intervention when not satisfied with the decisions of trustees.</p> <p>Annexure B to FSB Circular PF No 130 states “one of the duties of the board of trustees as confirmed by Section 7D of the Act is to take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with the Act”. In essence, this means the organisations are required to pay in full to the fund any contributions deducted from the member’s remuneration and any contribution for which the employer is liable to pay in terms of the fund rules.</p>	

The response from the pension funds adjudicator is supported by the OPFA Annual Report (2013/14:6) which shows that the Private Security Sector Provident Fund continues to be the one fund with the most significant number of complaints although somewhat reduced from the previous period. The two cases of Emily Mampoto Maphanga versus Anglo Group Provident Fund, case PFA/MP1425/2004 and Merriam Napogadi Komana versus Samancor Group Provident Fund, case PFA/MP/4828/2005/LM/th some of the cases that related to the distribution and allocation of death benefits.

The challenge facing beneficiaries of the Contract Cleaning Services and Contract Private Security Industry Provident Fund is that members are leaving their jobs, only to find when they are claiming their retirement benefits that their employers were not making contributions to the fund, and trustees were failing to take all reasonable steps to ensure that contributions were made timeously.

Table 4.38: Response to question 4

<p>Question 4: Apart from holding trustees accountable for their decisions, how does the OPFA relate with boards of trustees?</p>	<p>Adjudicator response: Firstly, the relationship was sour before the arrival of the current pension funds adjudicator (Ms Lukhaimane). Now the relationship with trustees has improved and currently there are continuous interactions through the annual Pension Lawyers Association, whereby the pension funds adjudicator gets a slot to address the stakeholders about achievements, successes and challenges related to pension funds stakeholder engagements and relationships, which are all aimed at</p>
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	improving stakeholder relations
<p>Finding: The response points to an improved or a healthy relationship between the OPFA and board trustees. However, it was pointed out that before the arrival of the current pension funds adjudicator Ms Lukhaimane, the relationship between the OPFA and trustees was sour.</p> <p>This was further alluded to during the focus group discussion with the trustees at Jorge’s Resort at Steelpoort on 13 February 2016. The finding concurs with Nevodwe’s presentation titled “Members’ rights and duties, where should the emphasis be” The presentation took place at Pension Lawyers Association conference, Misty Hills, Johannesburg, on 05 March 2013.</p> <p>Improved relations between OPFA and trustees will benefit beneficiaries but a sour relationship will be to the disadvantage of beneficiaries since trustees can delay the implementation of the determinations of the PFA.</p>	

Table 4.39: Response to question 5

<p>Question 5: Can the board of trustees challenge the ruling of the Pension Funds Adjudicator, if yes, under which circumstances?</p>	<p>Adjudicator response: Section 30P of the Act states that any party not satisfied with the determination of the PFA, may within six weeks lodge a complaint with the Registrar of the High Court (even complainants can appeal, not only trustees)</p>
<p>Finding: The response points to the fact that no one is above the law in the Republic of South Africa.</p> <p>Section 30P of the Act makes reference for Access to court. That –</p> <p>(1) Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the Supreme Court which has jurisdiction, for relief, and shall at the same time give</p>	

written notice of his or her intention so to apply to the other parties to the complaint.

(2) The division of the Supreme Court contemplated in subsection (l) shall have the power to consider the merits of the complaint in question, to take evidence and to make any order it deems fit.

Therefore, this opens a door for any party aggrieved by the pension funds adjudicator’s determination who may within the prescribed timeframes lodge a complaint with the Registrar of the high court for a judicial review. In essence this implies that even beneficiaries who may be aggrieved by the PFA’s determination may approach the Supreme Court to review the PFA’s determination. This stands as a benefit to beneficiaries, not as a challenge.

Table 4.40: Response to question 6

<p>Question 6: Can trustees be held accountable whereby their decision had unfairly disadvantaged a legitimate beneficiary financially, in situations like where children lost an opportunity of going to school due to lack of funds emanating from loss of breadwinner, whose death benefits were lying in a trust account for a very long time exceeding the reasonable waiting period provided of twelve months?</p>	<p>Adjudicator response: Yes, but currently there is no legislation that prescribes how trustees should be held accountable. To this end, trustees are held accountable through a determination by the pension funds adjudicator which is legally enforceable.</p>
<p>Finding: The answer was “yes” trustees can be held accountable regardless of the fact that currently there is no legislation in South Africa that prescribes how they should be held accountable. The determinations of the PFA are one the ways of holding trustees accountable.</p> <p>FSB undated document titled “Role of Trustees” on page 19 also stated that it is</p>	

possible for trustees to be held personally or jointly and severely liable for damages resulting from negligent conduct.

Determinations of the PFA are currently the only way of holding trustees accountable. Therefore, the centralisation of the OPFA in Gauteng will remain a stumbling block to many beneficiaries residing outside Gauteng who need the PFA to hold trustees accountable for their decision to distribute and allocate death benefits.

Table 4.41: Response to question 7

<p>Question 7: Based on the nature of complaints received by the OPFA, what can be considered to be the weaknesses of trustees?</p>	<p>Adjudicator response: Trustees fail in their duty related to Section 13A which requires them to ensure that an employer deduct pension funds from employees and pay the contributions to the funds. Secondly, trustees fail to submit a schedule of member contributions to the fund by the employer and fail to report non-compliance by the employers. The possible contributing factor to these failures is lack of relevant academic knowledge, qualifications and skills. However, the Financial Services Board recently proposed that trustees will be required to possess a prescribed minimum educational qualification; hence the FSB is taking the lead in curriculum development and the academic unit standards.</p>
<p>Finding: The response of the adjudicator points to the failure by trustees to</p>	

execute their duty as prescribed by Section 13A of the Pension Funds Act, 24 of 1956. Secondly, it points to the weakness of the current setup in which there are no prescribed academic qualifications which will provide trustees with the relevant knowledge and skills which are crucial to the functioning and understanding of their roles and responsibilities as trustees.

The need for academic qualifications for trustees was emphasised by Hunter, during the Pension Lawyers Association Seminar in Sandton on 09 October 2014. Hunter indicated at the conference that the FSB has to this end submitted a proposal to SAQA for National Trustees Qualification for possible approval.

FSB Draft Information Circular (2015:4) indicates significant progress towards the establishment of a new set of knowledge and skills measurement standards by the registrar of pension funds after consulting with representatives in the retirement funds industry.

It should also be noted that in order to assist board members to acquire the appropriate knowledge of the principles of sound fund governance and governance policies and practices designed to ensure compliance with those principles, the FSB created the Trustee Toolkit, a free on-line training course (FSB Draft Information Circular, 2015:7).

Table 4.42: Responses to question 8

<p>Question 8: Are there consequences for laziness or negligence for trustees, collectively or individually?</p>	<p>Adjudicator response: Soon there will be legislated consequences as trustees are required and expected to distribute benefits diligently, and invest funds responsibly.</p> <p>With the proposed academic qualification trustees will be qualified to</p>
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	<p>understand their work rationally, unlike currently, whereby trade union interests decide who becomes a trustee regardless of his/her academic knowledge and skills. Currently OPFA has a pending case at the Supreme Court of Appeal by trustees who have been taken to task for negligently abusing members' funds. The trustees lost the case at the Gauteng North High Court, hence they appealed to the Supreme Court of Appeal.</p>
<p>Finding: Soon there will be consequences prescribed by legislation. But currently there are no consequences prescribed by legislation.</p> <p>FSB undated document titled "Role of Trustees" on page 19 also confirms that trustees can be held personally or jointly liable for damages resulting from negligent conduct. Even though a trustee is said to be covered by the fund's fidelity cover and professional indemnity insurance that the FSB insists funds should have in place. This is the insurance which the trustees alluded to on topic 15 of their focus group discussion.</p> <p>In addition, the researcher asked the official from the OPFA about the chances of the victims of the Fidentia Asset Management getting any financial compensation for their financial loss. The answer to the question was that the victims stand no chance of getting financial compensation, since a bigger chunk of their money was spent to finance a luxurious lifestyle of an individual within the Fidentia Asset Management Company.</p> <p>The challenge facing beneficiaries is that chances of receiving financial compensation for their financial loss that emanated from wrong decision making by trustees are next to zero.</p>	

4.7 Summary

The findings of this study from case studies and field work data collection against the study objectives are reflected on **table 4.43** below:

Research Objectives	Findings
<ul style="list-style-type: none"> • To determine the impact of the decision-making by trustees on the socio-economic welfare of beneficiaries who have to rely on pension pay-outs or death benefit. • To find out the challenges facing beneficiaries and their experience of dealing with trustees: surviving spouses and retired members. • To find out the nature of changes in lifestyle of widows before versus after losing their breadwinners. • To find out the most common complaints received by the OPFA and how the OPFA interacts with the society at large. 	<ul style="list-style-type: none"> • Poor treatment of widows by trustees • Widows appeared to be recognised at the mercy of trustees instead of being classified according to the criteria set by section 37C of the Act. • Unavailability of trustees to former members has adverse impact on their psychological well-being emanating from worries that there is no one available to clear their concerns. • Poor soft skills on the side of trustees. • Beneficiaries are vulnerable to lawyers who are not assisting to resolve their problems. • Beneficiaries who cannot afford to engage the services of a lawyer do not have any other recourse. • Drop in the quality of life of widows when comparing their lifestyle before

	<p>losing their breadwinner against lifestyle after losing their breadwinner</p> <ul style="list-style-type: none">• Lack of prescribed minimum academic qualifications for trustees• No uniform support to trustees in terms of logistical support and exposure which includes attendance of national conferences and workshops about trends and developments in the pension fund industry)• Currently there is no legislation that prescribes consequences for laziness, ignorance and negligence by trustees when executing their duties.• Although some widows know about the OPFA, others do not. Former members also do not know about OPFA.• OPFA is planning to embark on community awareness campaigns through road shows to teach communities about the OPFA and how this office can assist them with their related challenges
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Constraints experienced during the field work of data collection were the unavailability of active trustees who are serving on the investment sub-committee of a board of trustees to be part of the focus group discussion, and the unavailability of FSB Report on COSATU's investment wing "Kopano Ke Maatla" which is about the ill-advised investment of workers' pension money. However, the two constraints did not compromise the achievement of the research objective. The constraints were fully described in Chapter Five.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The purpose of this study was to find out the impact of the decisions of pension funds trustees on the socio-economic welfare of beneficiaries in Greater Tubatse Municipal area based on a set of four objectives. The chapter covered the conclusions drawn from the finding which were presented in Chapter Four and the proposed recommendations for solving the problems which lead to trustees' decisions being challenged at the OPFA by beneficiaries.

5.2 Summary of study objectives

The conclusions and recommendations of this study were drawn from the following study objectives:

- To determine the impact of the decision-making by trustees on the socio-economic welfare of beneficiaries who have to rely on pension pay-outs or death benefit.
- To find out the challenges facing beneficiaries and their experience of dealing with trustees: surviving spouses and retired members.
- To find out the nature of changes in lifestyle of widows before versus after losing their breadwinners.
- To find out the most common complaints received by the OPFA and how the OPFA interacts with the society at large and

5.3 Conclusions drawn

It can be concluded that regardless of the existing guidelines to assist trustees when executing duties related to section 37C of the Act, trustees seem to be lazy when tracing, identifying and verifying dependents, even the existence of reliable evidence is not assisting in line with the *Sowetan* article dated 19 March 2015 "widow's 14-year wait over" by Thuli Zungu on p19. The study objective was to

“find out the challenges facing beneficiaries and their experience when dealing with trustees”. It can be said that trustees are battling to deal with beneficiaries to the extent that they do not have to go out looking for them.

Based on the findings of two case studies of TC Khadi Versus Univen Provident Fund & Sanlam Fund and GJ Radebe of Thokoza versus Metal Industries Provident which are aligned to the study objective of “finding out the challenges facing beneficiaries and their experience when dealing with trustees. it can be concluded that regardless of the available guidelines from the Act, trustees are battling to trace, identify and verify dependents and information at their disposal. There is a possibility of unnecessary omissions by trustees when tracing and identifying dependents because of ignorance.

The time when beneficiaries become aware of the existence of trustees is a challenge in the sense that it happens during the mourning period of the death of their loved one when most are still in a psychological state of shock. On the question of “how aware are beneficiaries of pension funds of the duties of trustees”. Beneficiaries were not aware.

Trustees can be said to be unknown persons to widows in Greater Tubatse Municipal area. This has the potential to make it difficult for widows to engage openly and freely.

It can be said that widows are only cooperating with trustees because there is hope of receiving money at the end of their painful exercise of engaging with the trustee. The objective was to “find out the challenges facing beneficiaries and their experience when dealing with trustees”.

Widows are facing a challenge of engaging with strangers to make life decisions which will impact on their socio-economic welfare

Financial planning can be difficult in the absence of non-disclosure by trustees to beneficiaries regarding the amounts due to them. The responses indicated that three widows had the same concern of not knowing the amounts that were being claimed or what would be payable to them as dependents and beneficiaries. The

objective was to “find out the challenges facing beneficiaries and their experience of dealing with trustees”.

It can be concluded that at times the waiting period for widows before receiving their death benefits can be very long like it happened in the matter between NM Komana versus Samancor Group Provident Fund, PFA/MP/4828/2005/LM/th , who waited for nine years and the Giyani- based widow versus GEPF as reported in the *Sowetan* article by Thuli Zungu dated 04 March 2015. The report dealt with a Giyani-based widow and her two children who had been living in abject poverty for the past 14 years, yet they had almost R500 000.00 sitting in government coffers in the GEPF.

It can be concluded that there is a change from better to worse in the socio-economic quality of life of beneficiaries after losing their breadwinner compared to the time before losing their breadwinners. This was confirmed by the objective of “finding out the nature of changes in lifestyle of widows before versus after losing their breadwinners”.

It can be said that the widows and former members are vulnerable without the assistance of a knowledgeable or informed relative about the OPFA. This was in relation to the question of “where do beneficiaries seek help in the event of a dispute with trustees”. Nevondwe and Odeku (2013:818) refer to the PFA “as a specialist tribunal that aspires to be a respected institution that makes binding and final determinations in pension fund complaints submitted in terms of the Pension Funds Act, 24 of 1956”.

It can be concluded that trustees do not inspire confidence for widows if the experiences of the widows in Greater Tubatse Municipal area is applicable to many widows in the same circumstances and situations. This refers to instances in which trustees do not give widows a voice, are not sharing information with widows on the amount of money payable to the beneficiaries and not educating beneficiaries and failing to trace and identify legitimate beneficiaries.

Again, it can be concluded that beneficiaries, particularly widows do not learning anything beneficial or positive from their engagements with trustees.

Although communication is in writing for former members regarding their retirement benefits, there is a language barrier since communication is in English, which some members do not understand well and there is no trustee to clarify uncertainties. HR departments only give letters to retirees, but cannot clarify uncertainties. Therefore, it can also be concluded that in Greater Tubatse trustees are not serving retirees, but only surviving spouses/widows.

It can be concluded that retired members and widows in Greater Tubatse who do not know about the PFA are relying on lawyers for assistance when they derive no joy from trustees and former employers regarding their death benefits and retirement packages, and those who cannot afford to engage the services of lawyers do not have any other recourse. The objective was to “find out where beneficiaries seek help in the event of a dispute with trustees”.

It can be concluded that some trustees are operating at the mercy of the employer because the employer may demand that they be on the production line when they should be doing trusteeship work.

Unless trustees fulfil the duty to inform and educate beneficiaries, retiring members are facing a challenge since there will be no trustee to give them a voice in the event they will have queries and uncertainties on their pension pay-out benefits. The objective was “to find out the challenge facing members who are retiring soon”.

Since trustees can influence the selection and appointment of fund managers and remove non-performing fund managers, through decision making, trustees have the potential to have an impact on the socio-economic welfare of beneficiaries. It can thus be concluded that trustees are aware of the impact of their decisions on the socio-economic welfare of beneficiaries, since the objective was “to determine whether trustees are aware of the impact of their decisions on the socio-economic welfare of beneficiaries in Greater Tubatse Municipal area”

It can be concluded that logistical support to trustees is available at the discretion of the employer.

It can be concluded that quarterly feedback meetings are limited to active members only at their respective workplaces, since the objective was to determine “how aware are beneficiaries of pension funds of the duties of trustees” meaning that former members and surviving spouses/widows are left out.

It can be inferred that widows cannot distinguish a trustees from HR personnel from the employer of their deceased breadwinner.

The duty to educate can be compromised due to the fear of invading what trustees consider to be private space, which can have dire consequences on the distribution and allocation of death benefits in the event the member dies.

It is possible for trustees to be misled intentionally by witnesses and claimants of death benefits.

Beneficiaries' demand for recognition by trustees will stay for a long time.

Lack of formal academic qualifications and training with regard to soft skills (listening skills, interpersonal skills and communication) for trustees pose a threat to beneficiaries during their engagement because the time of engagement coincides with the mourning period of a beneficiary who has just lost a breadwinner.

Although there is currently no legislation, trustees can be held accountable for their decisions through the determinations of the PFA.

Dependents of fund members employed in Contract Cleaning Services and the private security industry are at high risk of not getting their benefits upon retirement or death of a breadwinner

The relationship between trustees and the PFA is healthy regardless of what appears to be numerous determinations by PFA against trustees.

5.4 Recommended solutions

5.4.1 *Orientation for beneficiaries:* It is on record that most employers have the so-called family day once per year for the families of their employees to visit the employer's premises. It is during those days that the spouses and children of the employees as potential beneficiaries be oriented about the different roles and responsibilities of the employer and trustees in the event they lose their breadwinner.

5.4.2 *Identification of trustees:* Trustees should be formally introduced to beneficiaries and their roles well defined to beneficiaries.

5.4.3 *Training and development for trustees:* It is hereby recommended that the sooner the better to implement a training curriculum, so that academic standards can form part of the criteria for nominating and appointing trustees, most particularly on soft skills like communication, interpersonal and listening skills.

5.4.4 *Professionalising trusteeship:* Fast tracking the approval of the SAQA proposed professional mandatory qualification for trustees should be a priority of the FSB.

5.4.5 *Business process disclosure:* it should be required from trustees to disclose all necessary material information regarding the rights of the claimant, all role players like fund administrators on behalf of minor dependents who are represented by guardians and the beneficiary be informed that if not satisfied he/she can report the dissatisfaction to the PFA.

5.4.6 *Pre exit surveys:* retiring should be engaged before the exit date to determine whether members understand what is due to them as retirement benefit, and how it was calculated, like with motorists who want to insure their vehicles are informed about the office of the short- term insurance Ombudsman with address and contact details in the event their client is not happy with the service or conduct of the insurance service provider.

5.4.7 *Post exit surveys:* In order to save trustees and surviving spouses from unscrupulous lawyers, a post-exit survey should be conducted to ensure that former members are settling down well and enjoying their retirement.

- 5.4.8** *Decentralisation:* It is recommended that the OPFA be decentralised so that it becomes accessible to beneficiaries who are based outside Gauteng Province.
- 5.4.9** *Road shows by OPFA:* It is recommended that OPFA should embark aggressively on road shows to raise awareness among beneficiaries that the PFA is appointed to assist them when they do not derive much joy from trustees and fund administrators.
- 5.4.10** *Educating members and trustees:* It is recommended that members be educated about the risks of cohabitation with multiple partners, and the importance of registering any change in their social lives. Trustees ought to know and understand that their work has the potential to shape and determine the socio-economic lives of the future society, whether good or bad.
- 5.4.11** *Regulation of support for trustees:* it is recommended that the FSB regulate the support given to trustees to level the playing field in terms of logistics and exposure to current developments in the retirement industry.
- 5.4.12** *Secondment of trustees:* it is recommended that trustees be seconded to trusteeship for the duration of their term and then be removed from the production line, like it happens with trade union shop stewards.
- 5.4.13** *Bench marking against the best practice:* It is against this background that it is recommended that the FSB introduce a reporting template and timeframes for employers to report on their subscriptions to retirement funds with unannounced visits by FSB officials to inspect their records and books.
- 5.4.14** *Sanctions for neglecting trusteeship duties:* it is recommended that sanctions be introduced against trustees who neglect their duties.
- 5.4.15** *Benefits for corporate image:* it is recommended that employers through their corporate service responsibility department take stock of what is happening to their retired members, and to the dependents of their deceased employees.

5.5 Limitations to the study

The trustees that constituted the focus group were all serving on the death sub-committees from their respective funds. Trustees who were identified to be serving under the investment sub-committees refused to participate in the focus group discussion, fearing victimisation from their employers in the event that their employers become aware that they have participated in this focus group discussion. All the focus group participants did not agree to audio recording of the discussion. The concern raised was that participating in the focus discussion is equivalent to disclosing and sharing their employer's secrets. The interview with the official from the office could also not be recorded on an audio device. This was part of security measures laid down by the security desk at the main entrance.

Since all the participating trustees in the focus group were on the death sub-committees of their respective funds they could not dwell much on the investment duty of trustees, the investment decision making of trustees and investment challenges faced by trustees, and the impact of wrong investment choices. It should be noted that the study was also aimed at understanding the impact of investment decisions taken by trustees on the socio-economic welfare of pension fund beneficiaries, be it surviving dependents or retired members whose pension monies are still under fund administrators.

Therefore, the topics for discussion by the focus group were limited to the death sub-committee member's views, opinions and experiences. Some companies did not cooperate with the researcher in trying to identify trustees who can participate in this study, hence those who participated did so in their personal capacities, and all of them happened to be serving in one portfolio (death sub-committee). The unavailability of a trustee who serves on an investment sub-committee did not have fatal consequences to the study, except that the topic on investment by pension funds could not be unpacked to the fullest extent.

The other challenge was lack of access to one of the most important critical documents, the FSB report on COSATU's investment wing Kopano Ke Maatla. The report is about an investment of pension funds that did not go well, and the researcher was interested in finding out what was wrong with the investment choice and decision. This report was crucial for Phase 1 of the data collection. The report is not available on the website of FSB. A personal visit to FSB Head Office did not bear fruit for the researcher, in addition to the researcher's registered request with the FSB for a copy. The unavailability of the report did not have fatal consequences to the study.

The objectives of the study have been achieved in the sense that the researcher has managed to:

- “Determine the impact of the decisions of pension fund trustees on the socio-economic welfare of beneficiaries”.
- “Find out the challenges facing beneficiaries when interacting with trustees”.
- “Find out the nature of changes in lifestyle of widows before and after losing their breadwinners.”
- “How aware are beneficiaries of pension funds of the duties of trustees”.

5.6 Recommendations for further research

Further research is recommended in order to establish the extent to which the decisions of pension funds trustees have reshaped the socio-economic welfare of beneficiaries in the Greater Sekhukhune District Municipality, since this research was only limited to one out of the five local municipalities that constitute the District Municipality, which is Greater Tubatse Municipality. Although the study covered only one municipality the findings from this study suggest that consciously or unconsciously pension funds trustees' decisions have undesirable consequences on the socio-economic lives of people, which is against the good intentions of the establishment of pension funds.

Secondly, further research can be undertaken for the purpose of understanding what informs the investment decisions of trustees, and the impact of such investment decisions on the socio-economic welfare of beneficiaries, since the focus group could not dwell much on the investment function of trustees during this study. Based on the Fidentia Asset Management scandal which emanated from an investment decision by the Mine Workers Provident Fund trustees, which had undesirable consequences on the socio-economic welfare of widows and orphans, and COSATU's Kopano Ke Maatla investment flop, which is likely to have had an undesirable impact on the socio-economic welfare of fund beneficiaries.

5.7 Summary

The fight between beneficiaries and trustees is far from over unless meaningful interventions can be implemented through policy review by oversight institutions, like the FSB and National Treasury. Such interventions should also make provision for catering to the needs of former members. Finally there should consequences for laziness or negligence by trustees.

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Appendices

1. Ethical Clearance
2. Introductory letter to participants
3. Permission to conduct interview at OPFA