



ICTS Death Benefit Services

Question And Answers From The
Recent EBnet **In The Moment**
Webinar



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**Q 1. What about instances where a member was not supporting the minor child?
How do you quantify the dependency?**

A. The child support grant is a good benchmark; however, it is advisable to get clarity on the household expenses for the home the minor child lives in, determine how many people live in the home and attribute a portion to the minor child's living expenses. Irrespective of whether the deceased supported the minor child or not, the deceased had a legal duty to do so.

Q 2. How can Funds reduce risks while expediting death claim payment after receiving funeral claim, having fulfilled the 1st duty?

A. Investigations cannot be rushed. However, trustees do have the discretion to grant an advance, provided they have established with certainty the benefit value, and the number beneficiaries. Funds' lean towards limiting these advances to between 5% and 10% of the gross value. Trustees must be cautious; prioritise medical expenses (pay the service provider directly), electricity, school fees (pay the institution directly), and daily necessities (food, clothing, etc.).

Q 3. What about an instance where the deceased is reflected on an unabridged birth certificate of a minor child as the father yet the mother acknowledges that the minor child in question is not the child of the deceased and the family of the deceased also acknowledge this?

A. Paternity does not determine dependency. If the deceased supported the child, there is factual dependency. However, the child's biological father has a duty to support the child therefore the trustees need to determine the roll the biological father plays in this child's life as well. The biological father may be paying maintenance towards this child, in which case, whilst the child lived with the deceased, his/her level of dependency is less than it would have been if the biological father was not supporting his child financially.

Q 4. How to deal with spouse ,legal dependant, who for cultural or religious reasons, refuse to accept death benefit?

A. The quality of the investigation cannot be less than it would be in the normal course of events, however where a beneficiary refuses to accept a benefit allocation, all the information obtained about this beneficiary should be put before the trustees. The trustees need to consider everyone; they may elect to exclude someone but must have sound reasons for doing so. Some funds have a renunciation form that a beneficiary can complete. This form explains the consequences of renouncing a claim or right to a death benefit and requires a full explanation of why the beneficiary is renouncing their claim or right and the trustees must apply their minds to the reasons submitted.



Q 5. When we consider future earning capacity dependents, do trustees assess the ability of the surviving spouse or parents to continue maintaining dependents in the member's absence?

- A. Future earnings capacity of all beneficiaries can be considered with reference to:
- i. Age.
 - ii. Education.
 - iii. Health.

A surviving spouse or parent may also pass away before minor children reach the age of majority or complete a tertiary qualification. A spouse or parent who is employed will be better placed to support a minor child than one that is not.

Q 6. How do trustees deal with situations where dependents have multiple bank accounts and they are not forthcoming about their employment status and extent of dependency?

- A. Be upfront with them, advise them why you need the information and state their refusal to disclose the information you are requesting may result in the trustees proceeding to make an allocation without all the necessary information and they may be prejudiced as a result of their refusal.

Q 7. How does a retirement fund member protect his/her surviving spouse against opportunistic claims by independent adult children?

- A. This goes back to the quality of the investigation. Trustees cannot rely on affidavits alone. Third parties (work colleagues, fellow church members, schoolteachers, uncles, cousins, etc.), must be contacted and asked to verify this information. Occasionally, members attach a set of instructions to their nomination forms, these instructions can be helpful in narrowing down the dependents to be considered. In addition to this, DNA testing and documentation to prove factual support.

Q 8. How can people that live in the same household as the deceased prove dependency? e.g. sisters/brothers?

- A. If the siblings or other occupants of the household are employed, there will be a degree of interdependency (joint contributions to the household), alternatively, they may be unemployed and have benefitted from the contributions the deceased made to the household (accommodation, food, water, electricity, etc.). Look at their respective incomes versus expenses (one sibling or occupant may pay the rent, whilst another pays for food and another pays for electricity, etc.).



Q 9. What is the position where a deceased member did not nominate their parents as beneficiaries, whereby the parents were not financially dependent on the member? Would such parents be entitled to a share of the death benefit, particularly if they are pensioners?

- A. Go back to basics. Would the deceased have to have supported them in the future if he/she had not died? In answering this question, consider the parents:
- i. Health.
 - ii. Monthly pension.
 - iii. Living arrangements.
 - iv. Age.
 - v. Other surviving children who can look after them in the future.
- B. What is the value of the benefit? Is it sufficient to take care of the legal and factual dependents? If not, trustees may exclude the parents. If the benefit value is large, once everyone else's needs are met, and there is an excess, trustees may decide to make an allocation to the parents as prospective dependents.

Q 10. What legal standing does it have if the deceased's name is on a birth certificate but the spouse questions paternity and the now adult child refuses to participate in kinship DNA tests?

- A. First determine if the deceased supported that child financially. If there was financial support, there is dependency.
- B. Secondly, if the support stopped before date of death, and the trustees have made numerous, well documented requests for the child to submit to DNA testing, they can advise the child that they will proceed with making an allocation without the DNA confirmation and it may impact him/her negatively. The trustees must act in the best interests of all the beneficiaries at all times, hence delaying an allocation and partial payment indefinitely is a risk.

Q 11. Duty of care: If you work on a case and see another fund made payment, but excluded/did not know of a minor child, do trustees have a duty to advise the guardian of the benefit paid from the other fund? In this case the first fund had a benefit of over R3m.

- A. Trustees should make contact with the first fund and advise them that their investigation revealed a beneficiary who they may not have known about at the time they made their allocation.
- B. Engage the beneficiary and advise them you want to disclose their information to the first fund. Obtain their consent, 12. Who is responsible for the investigations on a Group Life Employer Covered Benefit? The employer or the Fund Trustees?



Q 12. Approved benefits, paid through the fund are subject to section 37C and therefore the trustees must investigate.

A. Unapproved benefits fall outside of the fund and are paid in terms of the nomination form, or if there is no nomination form, paid into the estate.

Q 13. What to do in a case where the paternity of the child is being questioned and the guardian of the child says that the only person that she will agree for the child to test with is the deceased? She says that the deceased remains will have to be exhumed to test with the child.

A. Exhumation is a drastic measure. Exhuming a body in South Africa requires strict legal authorization, including permits from the Provincial Department of Health, the premier, and local municipality. A formal application, death certificate, and police presence are mandatory, with procedures often coordinated by funeral directors for forensic investigation, reburial, or cremation.

B. A kinship DNA test is suitable for determining paternity. Should the guardian keep refusing to submit the child to DNA testing, and the requests are well documented, the trustees can advise her they will go ahead with making the allocation and it may impact negatively on the child's allocation. Speak to third parties, the greater community and work colleagues and see if they verify the child as the deceased's child.

Q 14. Can we rely on affidavit without supporting evidence in terms of allocation of the funds?

A. No, affidavits need to be interrogated and compared to information received from other beneficiaries' or third parties. Often affidavits received from a group of beneficiaries have identical wording, these affidavits are most likely written by one person and signed without the signatories understanding the content (this comes out during a telephonic interview).

B. There have been cases where beneficiaries have been intimidated and sign whatever is put before them in order to protect themselves and even their minor children.

Q 15. Had a case where the bones were thrown and the ancestors said they cannot take the money for the 2 minors. What then?

A. Whilst tradition must be respected, section 37C dictates that a full investigation must be done, the trustees must apply their minds to the facts and make a fair and equitable decision. The trustees must fulfil their fiduciary duties.



- Q 16. 16.How are the trustees dealing with the children born from undocumented mothers and are nominated by the members. The children are there but there is no birth certificates or ID?**
- A. This is prevalent and presents a problem. Allocations can be made, but payment cannot be processed. There have been cases where other family members register the children (because they are documented) as their own and submit the birth certificates. This is not encouraged but is factually being done.
- B. These allocations cannot be transferred to an unclaimed benefit fund or a beneficiary fund either, as they will not accept the benefits without a birth certificate or identity number.
- Q 17. How to deal with the pension fund administrator and pension fund deleted the members profile on the online portal and claim the member does not exist as pension fund member?**
- A. The member can approach the employer and ask for records of the deductions made monthly and proof they were paid over to the fund (the monthly schedules sent to the administrator so that they can allocate contributions), as well as rely on monthly payslips. Copies of old benefit statements will also strengthen the member's case.
- B. Most importantly, the member should lodge a complaint with the Pension Funds Adjudicator. Administrators are obliged to keep accurate records of member data.
- Q 18. In a dispute over a deceased member's pension death benefit, what specific legal criteria and types of evidence does the Pension Funds Adjudicator apply to determine entitlement (including treatment of spouses, customary/common-law partners and dependants), and what procedural remedies and timelines are available for challenging a trustees' distribution decision?**
- A. Going back to the definition of dependent, trustees can identify potential dependents.
- B. Spouses, customary spouses, civil union partners, life partners and dependents should be evaluated based on the following criteria:
- The age of the beneficiaries: Consideration of whether they are minors or nearing retirement.
 - The relationship with the deceased: The nature and closeness of the bond. Did they reside together? Did the deceased reside elsewhere for work?
 - The extent of dependency: Whether the person was wholly or partially dependent on the deceased for maintenance.
 - The financial state of the beneficiaries: This includes their current income, assets, and other means of support.



- The future earning capacity and prospects: Assessing the beneficiaries' ability to support themselves in the future.
- The amount available for distribution: The total value of the benefit being allocated. The board is required to weigh these factors holistically rather than following a rigid formula to ensure the distribution is fair to all identified dependents and nominees.

Q 19. Is there a standard or guideline on the minimum information required for an investigation report?

- A. Please refer to question 18b. If the trustees cannot respond in detail to these points, then the trustees have not complied with the requirement.
- B. In cases where potential beneficiaries do not respond or fail to submit detailed responses to questions and there is a document trail to show the fund has been requesting this information, the trustees may notify them that they will proceed with making allocations based on the information they have and the party in question may be prejudiced.

Q 20. To what extent can an affidavit be relied upon today, and how far can it be used when assessing a death claim?

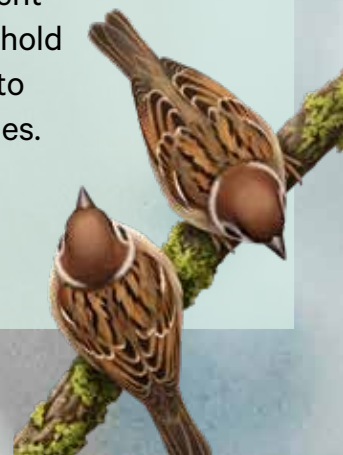
- A. Please refer question 14.

Q 21. On the topic of POPIA, what obligations do the Trustees have when a deceased member's spouse requests access to a beneficiary nomination form that includes details of other individuals who are also listed and nominated on the same document?

- A. Trustees should communicate the section 37C requirements to the beneficiary's and explain how they applied them to each beneficiary's personal circumstances. They can disclose the nominees, but not personal information without the consent of the beneficiaries named in the nomination form.

Q 22. We have a long overdue death case where the deceased's spouse is suspected of poisoning his wife. He maintains she committed suicide. Due to the long delays in receiving the toxicology report from the state laboratory, and considering the "bloedige hand" principle, how would one handle this? SAPS have opened a case of murder but without the toxicology reports, no further action has been taken. Doesn't help that the deceased's husband is a member of SAPS.

- A. In cases like these, all potential beneficiaries must be considered. If the trustees make an allocation to the spouse, it should be withheld subject to the final judgement being handed down by the court. Often trustees make the allocation, withhold the payment and state if the accused is found guilty, the allocation made to the accused will be paid to other dependents and state in what percentages.



- B. The dependents cannot be prejudiced by the slow justice process. They have daily needs and need to survive.

Q 23. Further on the topic of POPIA, what obligations do the Trustees have when receiving a PAIA application for all documents related to the investigation, which would include information of other claimants?

- A. Trustees should communicate the section 37C process and criteria (question 18b) to beneficiary's and explain how they applied them to each beneficiaries personal circumstances. The trustees should not go into exact details of other beneficiaries' personal circumstances (their incomes, the value of other benefits they have received, etc.).
- B. The trustees must consider the PAIA request (they can refuse to disclose the information). If the person requesting the information shows valid grounds for their request.

Q 24. When case is under investigation, and we are obliged to wait for court ruling; what happens to the other beneficiaries / dependants that need funds for basic living?

- A. Trustees cannot prejudice other beneficiaries. They have a duty to protect all beneficiaries; therefore they can make payment to the rest of the beneficiaries and withhold the allocation to the beneficiary who is waiting for the court judgement.

Q 25. How does the PFA apply the principle of nasciturus fiction?

- A. The nasciturus fiction protects the same rights as those afforded a posthumous child. The child must be conceived before death and born alive. The deceased would have had a legal duty to support his child, as a legal dependent.

Q 26. What if the child refuses to participate in the kinship tests?

- A. Refer to question 10.



Q 27. I tend to agree with overhauling this Section 37C, while it is well intended, it is extremely ineffective at achieving those well intended objectives as evidenced by high unclaimed benefits and lengthy turn around times to finalise claims. Importantly why should a members funds be decided by trustees not their own will?

A. Consider the following:

- i. The deceased may not have named any of his/her legal dependents.
- ii. The heirs named in the will may not be individuals who are in need of financial support.
- iii. iii. Based on the purpose of section 37C, to ensure that benefits are paid out in such a way as to ensure that the dependents of a deceased member are provided for and, in that way, to limit the State's liability to support such dependents. The trustees must therefore be mindful of the fact that the principles and the objectives of section 37C of the Act are such that the death benefit is not an inheritance.

