

# Unpaid Benefits Campaign

**Vaal Unpaid  
Benefits  
Campaign**



## ***Brief Background and Summary of the Campaign:***

Pension and provident funds subject to regulation and supervision by the registrar of pension funds reported that, as at the end of 2016, they were holding unclaimed benefits with an aggregate value of more than **R41,7 billion owed to more than four million people**. It is likely that there are unclaimed benefits with an aggregate value of at least another billion held by other pension and provident funds such as the Government Employees Pension Fund and the Transnet Funds.

There are probably **billions more** in unclaimed social security benefits held by the Road Accident Fund, the Unemployment Insurance Fund, the COIDA Compensation Commissioner and the Mineworkers Compensation Fund. And then there are probably **billions more** in unclaimed bank deposits, and unclaimed proceeds from investments in collective investment schemes, insurance policies and the like.

**This money has been earned by the labour of workers**, both local and migrant workers, and they, and the dependants of deceased workers entitled to these monies, should not be allowed to be deprived of what is due to them any longer.

**Many excuses are given for why those entitled to these monies cannot be found**. But, in a recent presentation by the Mines 1970s Unclaimed Benefits Funds, it was demonstrated that, with the right attitude, those responsible for finding and paying beneficiaries entitled to unclaimed benefits that accrued even decades ago can do it, even if those beneficiaries are living in rural areas, in South Africa or as far away as Malawi or Angola.

At the same time there are **unscrupulous people** pretending to be tracing agents who demand up-front payments from beneficiaries to help them make their claims and then either disappear without submitting the claims or deduct large fees from the benefits before the benefits are paid to the beneficiaries. There are also unscrupulous attorneys who will not let pension and provident funds deal directly with their clients because they want their benefits to be paid into their attorneys' trust accounts so that they can deduct large fees from them before paying what's left to their clients and without first proving that they are entitled to those fees.

We demand that:

- *All pension and provident funds holding unclaimed benefits must–*
  - *stop abdicating responsibility for the payment of those benefits by transferring them to unclaimed benefit funds, and, instead,*
  - *take all reasonable steps to trace and pay each person entitled to such a benefit, whether it is R500.00 or R500 000.00;*
  - *stop deducting administration and tracing costs from the benefits paid and, instead, ensure that those benefits are increased by returns earned on the investment of the benefits pending payment; and*
  - *report to the public on a regular basis on the steps that they have taken to achieve this and the results of their efforts – by, for example, notices published on the FSB’s website;*
- *All banks, insurers and other financial institutions that are holding monies that belong to people with whom they do not have contact must–*
  - *take all reasonable steps to find and communicate with those people and pay those to whom they owe money; and*
  - *report to the public on a regular basis on the steps that they have taken to achieve this and the results of their efforts.*
- *The State must take meaningful steps to help them to do this more cost-effectively by–*
  - *establishing a secure central unclaimed benefits register (those FSB officials who had been responsible for the Cancellations Project must not be allowed to be involved in it);*
  - *obtaining information about the likely whereabouts of those entitled to those benefits by obtaining information from the Department of Home Affairs, the South African Social Security Agency, foreign governments, those responsible for the RICA data base and others,*

*and collating and cross-checking that information and making the results of its investigations available to those who must trace and pay the beneficiaries;*

- *facilitating easier and cheaper claims to, and payments of, unclaimed benefits by those who live in rural areas or in other countries and/or who cannot afford to travel to towns, make photocopies of documents needed to support their claims and send their claims to the funds and their administrators;*
- *conducting public information campaigns, including media campaigns and road-shows, to inform members of the public about how to claim their benefits and that they do not have to pay anyone to make their claims for them;*
- *subjecting tracing agents to regulation and supervision; and*
- *prosecuting the fraudsters who are fleecing vulnerable beneficiaries.*

The truth is that there are **people with vested interests in making sure that beneficiaries do not get their money**. Large financial institutions have established unclaimed benefit funds to hold benefits that have accrued in pension and provident funds and they derive benefit from these monies by charging fees for the administration of the funds and the investments of their assets.

This is probably why, when in 2014, Rosemary Hunter, then the deputy-registrar of pension funds and deputy executive officer of the Financial Services Board (FSB), blew the whistle on unlawful measures adopted by the registrar of pension funds and staff of the FSB in the course of what became known as the **Cancellations Project** to achieve the closures and cancellations of the registrations of approximately 4600 pension and provident funds without properly checking what had happened to their assets and liabilities, she was victimized. In particular, she was vilified, then offered a ‘golden handshake’ of approximately R6 million in return for her resignation from the FSB and, when she refused the offer, she was subjected to disciplinary proceedings which then had

to be withdrawn because the case against her was weak.

Hunter's three-year contract with the FSB expired in July 2016 and was not renewed, probably because, by then, she had launched a court application in which she asked the court to order the FSB to give her reports by Justice O'Regan and KPMG on the results of their investigations into aspects of the Cancellations Project so that she could use the information in those reports to try to fix the problems that she had identified.

She also asked the court to order the FSB and/or the Minister of Finance to investigate the conduct of Dube Tshidi, the executive officer of the FSB, and other staff and office-bearers of the FSB in trying to get rid of her and to cover up the problems in the conduct of the Cancellations Project that Hunter had uncovered.

During the course of her litigation Hunter was contacted by Michelle Mitchley, an employee of Liberty Corporate, a division of the Liberty Group responsible for the administration of approximately 80% of the funds the registrations of which had been cancelled in the course of the Cancellations Project. Mitchley told Hunter how she had reported improper conduct by Liberty employees to the FSB and had likewise been victimized as a result. **When Liberty became aware that this whistle-blower and Hunter were talking, it fired her on trumped-up charges.** She is challenging her dismissal in the Labour Court.

*We demand that Liberty reinstates whistle-blower Mitchley with retrospective effect to the date of her dismissal, publicly apologises to her, ensures that she is not victimized in the future, compensates her for the hardships that she has had to endure, and encourages other Liberty employees, regardless of rank, to act with integrity when fulfilling their duties by making a public statement praising her for her courageous conduct in defence of the rights of its customers.*

It is problematic that those who try to do their jobs properly are victimized and those that are responsible for maladministration and possibly even corruption, are protected - not only for the whistle-blowers but also for the consumers of financial sector products

and services who rely on fund administrators to administer their funds properly and rely on the FSB and its staff to protect them from abuse, as they are paid to do.

*We demand that the Minister of Finance re-appoint Hunter to the FSB (if she is willing to go back to it) so that she can continue her good work with other FSB employees of integrity in trying to fix the problems relating to the Cancellations Project and to improve the regulation and supervision of pension and provident funds and their administrators.*

Unfortunately Hunter lost her case in the High Court in December 2016, probably because the FSB managed to persuade Justice Jacobs AJ that it was doing the right thing by conducting what were, in fact, superficial investigations into the Cancellations Project with a view to producing reports saying that no one was prejudiced by the way it was conducted and no one abused their powers while conducting it.

Hunter is appealing against the High Court's findings and orders – and the refusal by the Supreme Court of Appeal of her application for leave to appeal to it - because she fears that, if she does not persist with her litigation, the FSB will simply cover up the disaster and do nothing about the prejudice that many of the funds and their members and beneficiaries are likely to have suffered. After all, Hunter blew the whistle in July 2014 but the FSB is still 'investigating' and has not fixed even those problems that have been found.

It is important that, even if Hunter's litigation is not successful, what she has been trying to achieve is achieved anyway.

*We demand that the FSB fulfil its duties by-*

- *immediately publishing on its website all the reports by Jonathan Mort and anyone else on the results of their investigations into aspects of the Cancellations Project including, in particular, Mort's Third Inspection Report on the treatment of unclaimed benefits in the course of the Cancellations Project;*
- *immediately appointing an independent, properly*

*qualified and resourced firm of forensic investigators to conduct an investigation into the circumstances in which the registration of each of the affected funds was cancelled by the registrar with a view to determining-*

- *what happened to those of its assets and liabilities reflected in the financial returns submitted to the registrar most recently by the fund's properly constituted board of management;*
- *whether the fund, any of its members, beneficiaries or other persons with interests in the fund is likely to have suffered material prejudice as a result of the manner in which the Cancellations Project was conducted and whether those involved in the Project acted in way that was negligent, dishonest and/or corrupt; and*
- *if any potential prejudice is identified, timeously and effectively taking all such steps as may be reasonably required to remedy the likely prejudice;*
- *if any improper conduct is identified, taking all such steps that may be reasonably required to hold the person(s) responsible accountable for their conduct by means of disciplinary, civil and/or criminal proceedings; and*
- *publishing on the FSB website at intervals not exceeding three months reports on what it has done to date to comply with these demands, the results of its activities in this regard and what it intends to do in the future and by when it will do it.*

In the meantime Liberty and the other fund administrators (including Alexander Forbes, Momentum and others) involved in the Cancellations Project have remained quiet about even those cases in which it has been proven that the registrations of funds administered by them were cancelled at their requests even although they still had assets and liabilities. They should have made public statements acknowledging their roles in the mess and undertaking to fix the problems already identified and to investigate whether there were any others for

which their staff were responsible and, if so, to fix those to. But they haven't.

*We demand that Alexander Forbes, Cedar Employee Benefits, Liberty Momentum, NBC, NMG, Old Mutual, Sanlam and all other financial institutions involved in the Cancellations Project publicly account for their conduct in relation to it and what they are doing to fix any problems that they have helped to create.*

### ***How we intend to achieve the aims and objectives of the campaign***

- Building a network of organisations who are trying to assist members of the public to claim what is due to them and to address some of the public policy challenges;
- Organising workshops to empower community organisations to better help members of their communities to claim their benefits;
- Encouraging people and organisations with integrity working in the financial sector to publicly support our campaign, to help us to fund it and, if they are aware of any maladministration or unethical and/or unlawful conduct by their employers or others in the financial sector, to "blow the whistle" on such conduct;
- Engaging in discussions with the State, the FSB, large funds, fund administrators and other financial institutions, others working in the financial sector and the organisations that represent them, trade unions and others with a view to persuading them to act on our demands and/or to support us in our campaigns;
- Organising marches and demonstrations in support of our demands;
- Asking the media to highlight these issues more generally and also our demands.

### ***For more information***

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