

What must be done?

The new legal framework for South Africa's financial sector gives the FSCA greater powers to investigate harmful behaviour of private financial corporations. To show their commitment to this new vision of market conduct regulation and hard accountability, the FSCA should use this power to do the following:

- As a matter of urgency, thoroughly investigate and review each fund cancelled in order to determine which funds had assets and liabilities and should never have been cancelled.
- Thoroughly investigate the reasons behind Liberty's misleading submissions to the Registrar of Pension Funds which led to the cancellation of 4500 funds.
- Reconsider the manner in which financial regulators interact with private corporations and build safeguards against risks of 'regulatory capture'.



Acknowledging whistleblowers

Most of the what we know about the mistakes and unlawfulness in the cancellations project are only public knowledge due to the courageous work of whistle-blowers from the FSB and Liberty. They have fought to expose the truth on these matters at great personal cost.

Open Secrets is a non-profit that investigates private sector economic crimes and related human rights violations, and uses law and advocacy to hold the wrongdoers responsible.

The information above is based our investigation into the cancellations project and its impact on the lives of beneficiaries left unable to access their pensions.

Open Secrets also supports the work of the Unpaid Benefits Campaign (UBC) on this issue. The UBC is a coalition of community organisations, activists, and pension fund members who advocate for the payment of benefits owed to by all pension administrators. They have also pressured both the FSCA and the private companies that administer the funds to publicly account for their role in the mass cancellations. The tireless work of these activists is an important reason that the public is aware of this serious problem and the injustices facing many struggling to access their pensions.

**ON THIS BASIS, WE
HAVE WRITTEN TO THE
FSCA URGING THEM
TO ISSUE A DIRECTIVE
TO LIBERTY AND
ALL OTHER PRIVATE
ADMINISTRATORS
WITH SIMILAR FUNDS
TO IMMEDIATELY
APPROACH THE HIGH
COURT WITH A REVIEW
APPLICATION TO HAVE
ALL RELEVANT FUNDS
REINSTATED.**

PAY BACK THE PENSIONS!

PAMPHLET ISSUED BY OPEN SECRETS
DECEMBER 2018
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IMAGES: UNPAID BENEFITS CAMPAIGN
GRAPHIC ASSETS: CRAYONS

**open
secrets**

power & profit | truth & justice

REINSTATE CANCELLED PENSIONS IN COURT NOW!

**FSCA: IT IS TIME TO
ISSUE A DIRECTIVE
LIBERTY & OTHER
DELINQUENTS**



Unpaid benefits
in South Africa:
R42.15 billion

There is a big problem in South Africa:

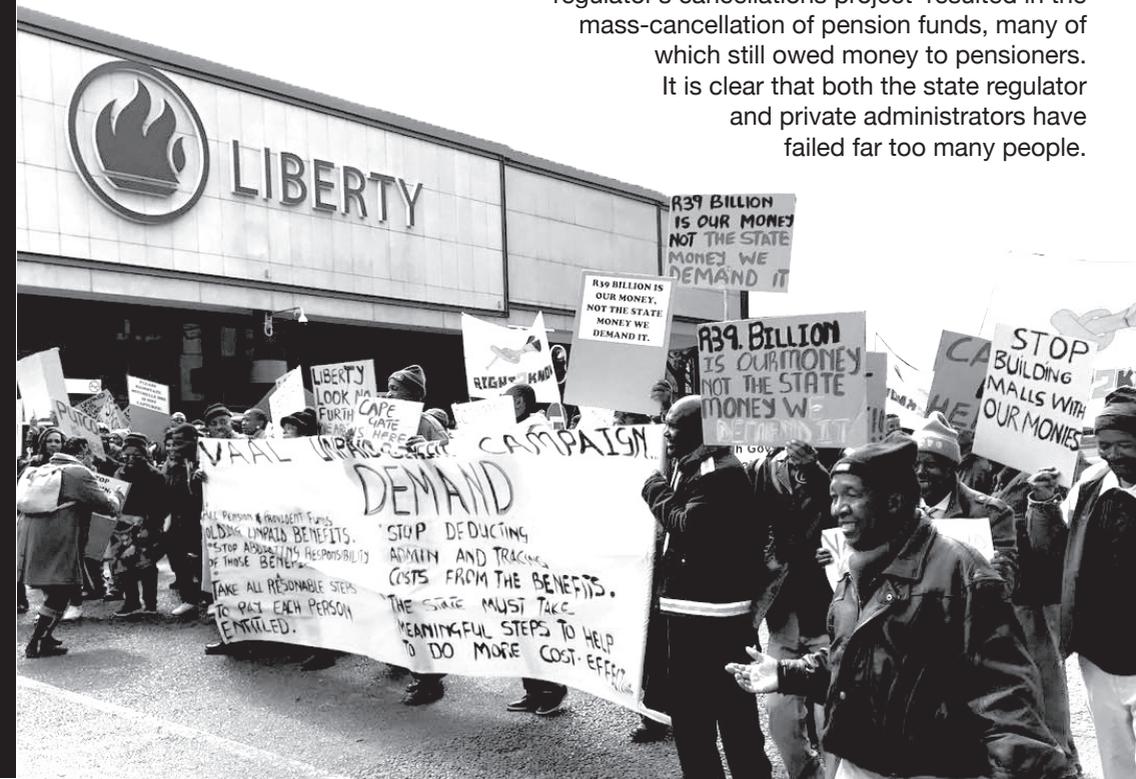
People who work for many years and pay money towards their pension or provident funds do not receive this money when they retire, or at all. There are many reasons for this, including the history of migrant labour in Southern Africa, and harmful labour brokering practices. The situation is made worse by the failure of the state regulator and the private financial service providers (FSPs) who run these pension funds to diligently track down and pay pensioners. On top of this, the regulator's cancellations project' resulted in the mass-cancellation of pension funds, many of which still owed money to pensioners. It is clear that both the state regulator and private administrators have failed far too many people.



R2.2 billion
'unclaimed benefits
funds' administered
by Liberty



Owed to:
4.5 million
beneficiaries





FSCA Financial Services Conduct Authority:
The state regulator of financial institutions

FSB Financial Services Board:
The former regulator of the non-banking financial services sector. On 1 April 2018, the FSB took up its new mandate as the FSCA.

FSPs Financial Service Providers:
These are often private companies which give out financial advice and services.

Here we focus on Liberty Corporate, an FSP, and the service it provides in managing pension and provident funds.

What was the cancellations project?

Between 2007 and 2013, the Financial Services Board (FSB), now called the Financial Services Conduct Authority (FSCA), started a ‘cancellations project’ to de-register 6757 pension funds on the basis that they were ‘shell funds’, meaning that they had no members, boards, or assets. However, many of these funds still owed money to beneficiaries and should never have been cancelled. Once a fund is cancelled and de-registered, the pension can no longer be claimed by the beneficiary. After de-registration, the assets were moved to ‘unclaimed benefits funds’ and invested. These unclaimed benefits funds therefore increase in value, and continue to make money through administration fees which are often charged based on total asset value. This means that while the pension beneficiaries cannot access their money because the funds were unlawfully cancelled, the FSPs continue to profit after cancellation.

How much money was unpaid?



This is difficult to answer because the FSB/FSCA has still not released all of their internal investigations into how beneficiaries may have been harmed by the cancellations. This is what we do know: KPMG was asked by the FSB to analyse 510 of the cancelled funds in 2014. It concluded that the Registrar of Pension Funds did not have the information required – including whether the funds still had assets – to reasonably order 500 of these 510 cancellations. They estimated a “high likelihood” of up to R2,5 billion in remaining assets and liabilities in 500 of the funds they reviewed. Even when the benefits owed are in the thousands, and might be considered by big corporations to be a small amount of money, many are dependents who rely on the pension of a deceased breadwinner that is owed to them. Delays and failures to pay these benefits have a serious impact on financially vulnerable people.

How did this happen?

There is significant evidence to suggest that both the state regulator (the FSB) and private fund administrators cut corners and ignored the law to de-register as many funds as possible in the shortest time. The Registrar of Pension Funds improperly appointed individuals who were either ‘authorised representatives’ or ‘trustees’ to facilitate the cancellation of funds, instead of ensuring that independent boards were in place to oversee this process. Many of these individuals were employees of the fund administrators, which is a clear conflict of interest as these administrators make fees from managing funds.

Even if funds were wrongly cancelled due to an honest mistake or incompetence, this is still unlawful. Administrators have duties of care towards the funds they administer, and have obligations to avoid conflicts of interest and keep proper records, among others.



What role did Liberty Corporate play?



During the cancellations project, 4500 pension funds were put forward by Liberty Corporate to be cancelled by the FSB. This makes up 80% of the funds de-registered in the cancellations project. Following pressure from FSB whistle-blower Rosemary Hunter’s court case, Liberty came forward and admitted that some of the funds should not have been cancelled. In 2017, it successfully applied to the High Court to re-instate 25 funds. Those 25 unlawfully cancelled funds alone had R90 million in assets owed to over 300 beneficiaries. In August 2018, Liberty made a public commitment to approach the High Court to reinstate a further 105 funds. This amounts to at least 130 funds potentially unlawfully cancelled by Liberty, which owed over R100 million to around 3000 people.

In a response to an email from Open Secrets asking when Liberty intends to approach the court to re-instate the remaining 105 funds, Liberty seems to have backtracked on its own commitment. Liberty now intends to pursue the reinstatement of funds via internal processes with the FSCA. This is alarming since there appears to be no legal basis for this change in strategy. The law requires that a decision to re-instate a fund that was cancelled so long ago must be made by a court in terms of the Promotion of Administrative Justice Act (PAJA).

Open Secrets is concerned that an internal process will be less public and could slow down the process of properly reinstating the funds, should the methods be unlawful.

Liberty must properly account for its role in getting funds cancelled by providing incorrect information to the FSB as to whether those funds had assets. It should also fully account for the profits made from any and all fees charged on unpaid benefits. Liberty also outsourced some of the cancellations work to a company called K2B, which focused on getting as many funds cancelled as quickly as possible, instead of tracking fund beneficiaries. K2B’s contract included bonuses in return for meeting certain targets for cancellations.

Where is the money?

Many of the funds held by Liberty were ‘wholly underwritten’. This means that the only assets in the funds were insurance policies, and the monthly contribution paid to a pension or provident fund by a beneficiary is essentially an insurance premium. The administrator (Liberty) is then liable to pay out the insurance policy to a beneficiary who claims their pension. This makes it difficult to determine the amount in pensions owed by Liberty because a pensioner’s monthly contributions do not go into a specific bank account. Instead, the money goes into Liberty’s general suspense accounts, and Liberty promises to pay out to beneficiaries once they come forward to claim their pensions.

5144

Number of funds registered with the FSCA

5118

Number of funds administered by private companies

1090

Number of funds administered by Liberty

Liberty is not the only administrator who should account: Other private FSPs like Alexander Forbes, Sanlam, and Old Mutual also took part in the cancellations project. They must also approach the courts to urgently reinstate any funds that still owe money to beneficiaries.