



HEAD OFFICE  
Johannesburg  
1<sup>st</sup> Floor, Norfolk House  
Cnr 5<sup>th</sup> Street & Norwich Close  
Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town  
2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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**Please quote our ref: PFA/WE/6377/05/CN**

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”): K KALAM (“the complainant”) v TELKOM RETIREMENT FUND (“the respondent”)**

1. Introduction

- 1.1 This complaint relates to the rate of late payment interest that was paid to a member of the Telkom Retirement Fund (“the fund”), pursuant upon the delay in the transfer of the complainant’s benefit from the first respondent to a preservation fund of the member’s choice.
- 1.2 The complaint was received by this office on 14 November 2005 and a letter acknowledging receipt thereof sent to the complainant on 17 November 2005. On the same date a letter was dispatched to the first respondent requesting it to submit its response by no later than 8 December 2005. The response, dated 24 November 2005, was received on 2 December 2005 and was subsequently forwarded to the complainant for a reply. The complainant’s reply was received on 7 December 2005.
- 1.3 After considering all the written submissions it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefore are set out below.

2. The complaint

- 2.1 The complainant is aggrieved by the rate of the late payment interest that was paid to her by the respondent as a result of its delay in effecting the transfer of the complainant’s withdrawal benefit from the first respondent to the Investec Preservation Pension Fund (“the transferee fund”).

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M Mhlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

Office Manager: L Manuel

2.2 The complainant's contention is that since she had lost growth on her investment, it is unfair of the first respondent to refuse to pay her interest at the rate that was declared by the respondent on its investments over the four-month period over which the transfer was delayed.

### 3. The response

3.1 The respondent states that the complainant's withdrawal notification was received on 31 March 2005 and was forwarded to its administrator, Old Mutual, on the same day. It ascribes the delay in the actual transfer of the complainant's benefit to the preservation fund to the large number of exits from the respondent over the relevant period and up to 30 June 2005. It further explains that the administrator and the employer's HR Division were under immense pressure at the time to process exit documentation and pay out benefits urgently. According to it, the situation was exacerbated by the change in the administrator's administration system, which resulted in a freeze of pension payment for the period 1 April to 11 May 2005.

3.2 According to it, the complainants benefit in the amount of R453 470.53, together with late payment interest of R8 329.52, calculated from 1 April to 20 July 2005, was eventually transferred to the transferee fund on 20 July 2005. The respondent concludes that there is no provision in the rules which stipulates that members' benefits have to be paid within a specific period, and that it always makes an effort to ensure that benefits are paid timorously.

3.3 On the issue of interest, the respondent states that the rules of the fund are silent in that regard. It goes on to state that the actuary of the fund determines the late payment interest, and the applicable rate is then approved by the board at every trustee's meeting. It goes on to state that the board had, at its meeting on 10 March 2005 approved a policy with regard to late payment interest which allows for the same to be paid at the rate of 0.5% per month.

3.4 It further states that once a member has exited the fund, s/he is no longer entitled to the growth rate declared by the respondent for active members, but to late payment as determined by the trustees and approved by the board from time to time. It concludes that the rate of late payment interest that was credited to the complainant was 0.5% calculated over the period from 1 April 2005 to 20 July 2005.

### 4. Determination and reasons therefor

4.1 The rules of the fund do not specify that benefits have to be paid or transferred within a specific period, and they are also silent on the issue of

- late payment interest. However, the respondent is bound, not only by its rules, but also by the relevant legislation which governs the operation of retirement funds, in this case, the Pension Funds Act.
- 4.2 Section 13A(5) of the Act seeks to expedite the transfer of the benefit or right to a benefit due to a member who has ceased to be a member of a fund (in circumstances other than those contemplated in sections 14, 28 or 29), and who has been admitted as a member to another fund, from the first fund to the transferee fund. This it achieves by stipulating that such benefit shall be transferred by the first fund in full within 60 days of its receipt of the member's written request, or within any longer period determined by the registrar on application by the first fund. Subsection (7) ensures that the object of the section is achieved by imposing the payment of interest, at the usury rate as prescribed by the Minister from time to time in the *Gazette*, on the value of the benefit which was not transferred within the prescribed or extended period.
- 4.3 In the instant case, the complainant's written notification was received on 30 March 2005, and the benefit eventually transferred on 20 July 2005. There is no indication that the administrator or the respondent sought any extension of the 60 day period from the registrar. Therefore the complainant's benefit should have been transferred by 30 May 2005, it was transferred some 111 days after the complainant made her written request to the respondent. Thus, the provisions of section 13A(7)(c) are applicable in this matter.
- 4.4 The usury rate of interest as proclaimed by the Minister of Finance in GN No. 166 of the *Government Gazette* No.29661 dated 27 February 2007 is 23% for transactions not exceeding R10 000 and 20% for those exceeding R10 000. The applicable rate in your case is 20%. Furthermore, the respondent is liable to pay the complainant interest at the prescribed rate of 15.5% on the amount of interest that is payable in terms of section 13A(7)(c), from the date of transfer until the date of final payment: (See *Bluhm v Eastern Cape Group Municipal Gratuity Fund & Eastern Cape Group Municipal Pension Fund*; Case No. PFA/EC/3791/05/VIA, dated 4 August 2006).
- 5 In the result, the order of this tribunal is the following:
- [5.1] The respondent is directed to calculate the interest payable on the amount of R453 470.53, at the usury rate of 20% per annum, from 31 May 2005 to 20 July 2005.
- [5.2] The respondent is further directed to, within 2 (two) weeks of the date of this ruling, pay the amount calculated in paragraph [13.1] above, less any amount already paid in respect of late payment

interest, together with interest thereon at the rate of 15.5% per annum, calculated from 20 July 2005 to the date of payment, to the Investec Preservation Pension Fund on behalf of the complainant.

**SIGNED IN CAPE TOWN ON THIS      DAY OF                      2007**

Yours faithfully

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**MAMODUPI MOHLALA**  
**PENSION FUNDS ADJUDICATOR**