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Please quote our reference: PFA/KZN/3959/2005/NVC

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): R R Jeawon v Metropolitan Life Retirement Annuity Fund (“the fund”) and Metropolitan Life Limited (“Metropolitan” or “the insurer”)**

### Introduction

[1] The matter concerns your request to transfer your fund share to another financial institution, as well as issues relating to financial advice received from the insurer. The complaint was received on 15 June 2005 and a letter acknowledging receipt thereof was sent to you on 23 June 2005. On 7 July 2005 a letter was dispatched to Metropolitan requesting it to submit a response to your complaint by 28 July 2005. The response was received on 11 August 2005. On 16 August 2005 the response was sent to you for a reply by 23 August 2005. Your reply was received on 25 August 2005. On 25 October 2005 further information was requested from Metropolitan and its response in this regard was received on 11 December 2005. On 15 December 2005 your reply to this response was requested by 2 January 2007, and was received on 3 January 2007. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. As the background facts are well known to the parties, I shall only repeat those facts that are pertinent for the issues raised herein.

### Factual Background

[2] In November 2002, when you were 65, the Government Employees Pension Fund transferred an amount of R1 229 532.67 on your behalf to the fund. From this amount you elected to take one-third in cash and after the deduction of tax, the balance of R820 000.00 is being utilized (with

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V Ngalwana (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), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

effect from 23 November 2004) to pay you an annuity, with a capital guarantee and a 5% annual income escalation.

### Complaint

[3] You are unhappy about:

[3.1] the fund's refusal to allow you to transfer from the fund and to consider alternative investment options at other financial institutions. You contend that you received your policy contract after the "cooling off" period and thus forfeited an opportunity to withdraw timeously from the investment. You also state that you are unable to survive on your current monthly income of R2 000 from the fund;

[3.2] the alleged inadequate financial advice and service that you received from a Metropolitan financial advisor. You emphasize that the ineptitude of the financial advisor is an important aspect of your complaint, and wish to transfer your funds to a company that employs "honest, reputable and knowledgeable financial advisors".

### Metropolitan's response

[4] Metropolitan states that you consulted an advisor from its Professional Advisors Division during 2002. There is a Record of Advice which indicates that several investment options were discussed with you. A copy of the policy signed by you on 11 November 2002 has been submitted by Metropolitan.

[5] In a response received on 11 December 2006, the Principal Officer of the fund states that the Trustees of the fund are concerned about the advisability of transfers between funds, and are of the opinion that such transfers are not always in the best interests of members. However, the Trustees have reviewed their initial response that transfers would not be permitted in view of the determination in *Browne v South African Retirement Annuity Fund and Others* PFA/FS/5271/2005/CN (as yet unreported). The Trustees have therefore agreed to submit a rule change that would allow for transfers, provided certain conditions are met. These conditions largely include assurances to be provided to the fund that the member has sound reasons for wanting to transfer and that he understands the implications of transferring from the fund.

[6] After requesting Metropolitan for clarification, this office was advised on 22 January 2007 that the transfers considered by the fund, and agreed to, provided certain conditions are met, include transfers both prior to and

after retirement.

- [7] Metropolitan concludes that on receipt of verification that the conditions have been met, it will consider your request to transfer to another retirement annuity fund at another financial institution of your choice. It will then also advise you of the transfer amount.

#### Determination and reasons therefor

- [8] It is evident that you are aggrieved by the advice and conduct of a financial advisor, employed by Metropolitan. The purpose of this office is to dispose of complaints as defined in the Act. The complaint must therefore relate to the administration of a fund, the investment of its funds or the interpretation and application of its rules and thereafter make one of four allegations. This grievance, directed at a financial advisor and/or an insurer does not relate to a pension fund. Therefore I do not have jurisdiction to consider this aspect of your complaint. You may approach the Financial Advisory and Intermediary Services (FAIS) Ombudsman, whose contact details appear at the foot of this letter.
- [9] Metropolitan's undertaking that the fund would submit a rule amendment to the Registrar of Pension Funds to allow for pre- and post- retirement transfers, is commendable. However, I think it more appropriate in the circumstances to impose a time-frame in this regard.

#### Relief

- [10] In the result, my order is as follows:
- [10.1] the board of trustees of the fund is hereby directed to submit a rule amendment to the Registrar of Pension Funds allowing for the transfer of members to other approved retirement annuity funds, within six weeks of the date of this determination;
- [10.2] upon the registration of the rule amendment, you may submit your application to the fund to transfer your assets in the fund to another approved retirement annuity fund of your choice. The fund is further ordered to consider your application to transfer within two weeks of the date of receipt thereof.

Dated at Cape Town on this the                      day of                      2007.

Yours faithfully

**Vuyani Ngalwana**  
**Pension Funds Adjudicator**

