



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 reference: PFA/KZN/4780/06/KM

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): E NGCOBO (“the complainant”) v SECURICOR GRAY GROUP PROVIDENT FUND, (in liquidation) (“the respondent”)**

**1. Introduction**

- 1.1 This complaint concerns the placement into trust of the death benefit allocated to the complainant’s grandchild.
- 1.2 The complaint was received on 4 August 2005 and a letter acknowledging receipt thereof was sent to the complainant on 12 August 2005. After investigation the name of the respondent only became known to this office in September 2006. A letter was dispatched to the respondent’s administrator on 5 September 2006 requesting it to submit a response to the complaint by 12 September 2006. The response was received telephonically on 12 September 2006. A response by electronic mail was received on 16 February 2007. This office has been in contact with the complainant telephonically on several occasions to assess progress in this matter.
- 1.3 After considering the written submissions it is considered unnecessary to hold a hearing. The determination and reasons therefor appear below.

**2. The complaint**

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M Mohlala (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

- 2.1 The complainant is the grandmother of Nomondo Ngcobo ("Nomondo"), for whom she is responsible, since both her parents are deceased. Her father, Modicai Msomi ("the deceased"), was a member of the respondent, and as a consequence of his death in 1999, a benefit in the amount of R19 413 became payable.
- 2.2 The complaint as initially framed was that no payment had been made in respect of Nomondo, the deceased's minor child. In this regard the complaint states that Ms N. Ngcobo (your daughter and mother of Nomondo) submitted the necessary forms in 1999 (whether to the employer or the fund is unclear), and was assured that the claim was being processed. In 2002 the complainant's daughter passed away, and she subsequently contacted the employer and submitted the death certificate. She was also advised that the claim was being processed. She further chased the matter up on several occasions and were referred to the fund administrator, Aon Consulting South Africa (Pty) Ltd.
- 2.3 At the time of lodging the complaint no benefit had been paid. Presumably as a consequence of investigation by this office, and after a period of more than seven years had elapsed since the death of the member, the board of trustees of the respondent decided to divide the benefit that was payable between the deceased's three minor children. An amount of R6 471 was allocated to Nomondo. She was informed of this but never received any payment. In a telephone call to this office on 29 January 2007 the complainant advised that her banking details had been requested, and that payment would be imminent, but so far nothing had been forthcoming.
- 2.4 It subsequently transpired that the monies were placed into trust with Fairfund trust administered by Fairheads Umbrella Trust Company on 1 February 2007. She states that she is a pensioner, that Nomondo is now a grade 6 pupil, and that she doesn't have insufficient financial resources to satisfy her needs. She therefore want to be paid the benefit directly.

### **3. The response**

- 3.1 The respondent, through its administrator, indicated that the monies had been placed in trust until Nomondo reached 21 years of age. The respondent was asked why the money was not paid directly to the guardian, and whether it was cost effective to create a trust for the amount in question. It did not reply to the second question posed, and

in relation to the first, responded as follows:

“In most cases these people just spend the money and the kids don’t get anything at all and the rules of the Securicor Provident state that anything for the kids should be kept in a Trust.” (sic)

3.2 We have been furnished with a copy of Fairfund trust’s acknowledgement of the R6 471 received into trust on behalf of Nomondo. It records that the income payable on this amount would be R20 (presumably per month).

#### **4. Determination and reasons therefor**

4.1 Although the Act provides for payment of benefits into trust, I have checked the rules of the respondent, and the administrator is incorrect in contending that they prescribe that all minors’ benefits must be placed into trust. In fact, there is no provision whatsoever in the rules concerning the establishment of trusts, although there is a provision regarding the payment of a benefit in instalments by the respondent.

4.2 However, it is not necessary for me to decide the question of whether the trustees acted correctly or not in placing the benefit in trust. The fund you are complaining about is in liquidation. The Registrar of Pension Funds has confirmed the appointment of Mr Vivian Cohen as liquidator of the fund with effect from 23 February 2006. Section 28 of the Act makes provision for the Registrar to monitor the liquidator to achieve a fair distribution of fund assets. Where such process is set in motion, the liquidator and the Registrar are best placed to protect the complainant interests and those of other creditors. Any party unhappy with the directions given by the Registrar may approach the High Court (section 28(10)). Furthermore, all claims must be proved to the satisfaction of the liquidator subject to a right of appeal to the High Court (section 28(14)). Where a fund is in liquidation no complaints may be submitted to or continued with in this tribunal without written notice being given to the liquidator by the complainant within four weeks of the date of liquidation. The liquidator confirmed telephonically that he had not received such notice from the complainant, as required by the Act. Thus, this office does not have the jurisdiction to investigate your complaint (see *Heyns v Saficon Boumat Pension Fund (In Liquidation)* [2002] 9 BPLR 3841 (PFA)).

4.3 I suggest you submit your claim to the liquidator whose details appear at the foot of this letter.

In the foregoing I therefore order as follows:-

5. The complaint is dismissed.

DATED AT CAPE TOWN ON THE                      DAY OF                      2007.

Yours faithfully

**MAMODUPI MOHLALA**  
PENSION FUNDS ADJUDICATOR