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**Our ref: PFA/FS/5593/05/VIA**

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 1956 (“the Act”) – CHARLENE EVANS & BRUCE EVANS v LIFESTYLE RETIREMENT ANNUITY FUND (“the fund”) & LIBERTY GROUP LIMITED (“the insurer”)**

Introduction

1. This matter concerns the payment of a benefit from a retirement annuity fund on cessation of contributions before a member’s chosen retirement date. The complaint was received by this office on 31 August 2005. On 29 September 2005 letters were dispatched to the fund and the insurer giving them until 24 October 2005 to file their respective responses to the complaint. The respondents’ responses were received by this office on 31 October 2005. On 1 November 2005 copies of the responses were sent to you for a reply by 15 November 2005. A reply was not received from you and neither from your husband. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.
2. In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the insurer on 19 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. On 24 October

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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

2006 you informed this office telephonically that the matter was not settled and that we should proceed with the adjudication of your complaint. It is with that brief background that I now determine this complaint in the ordinary course.

3. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.
4. Your complaint and your husband's complaint (which were submitted to this office as a combined complaint) concern precisely the same issue. As such I have dealt with them in one determination.

### The Factual Background

5. On 1 February 1997, at the age of 30, you became a member of the fund. The fund is administered by the insurer which is also the investor of its funds. Your monthly recurring contributions were invested in a Liberty Life policy with policy number 57243705800 ("Policy A"). Your chosen retirement age is 60 years.
6. On 1 February 1997, at the age of 34, your husband became a member of the fund. His monthly recurring contributions were invested in a Liberty Life policy with policy number 57243703400 ("policy B"). On 1 November 2000 he commenced making further additional monthly recurring contributions which were invested in a second Liberty Life policy with policy number 0016606767 ("policy C"). His chosen retirement age for both policy B and C is 55 years.
7. You and your husband ceased making contributions in December 2002. Your respective policies became paid-up with effect from 1 December 2002.

### The complaint

8. As I understand your complaint, you are dissatisfied with the insurer's refusal to refund you your contributions (with investment growth) when you and your husband made your policies paid-up.

### The response

9. The respondents state that pursuant to the requirements of the Income Tax Act, rule 6.1 provides that a member may choose to retire from the fund at his/her selected retirement date or at any age after having attained the age of 55 years but prior to attaining 70 years. The exception is contained in rule 6.1.3 in terms of which a member may retire prior to the age of 55 if he or she becomes totally and permanently disabled.
10. The respondents state that the above explains why the fund cannot accede to

