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Please quote our ref: PFA/MP/6564/2005/EMD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): PJ SCHEEPERS (“the complainant”) v FREE STATE MUNICIPAL PROVIDENT FUND (“the respondent”)

1. Introduction

The complaint concerns the complainant’s dissatisfaction with the service delivery by the Respondent’s Independent Election Institution (IEI), appointed to manage the election of board members of the respondent, as well as the services of certain other service providers.

1.2 The complaint was received by this office on 15 November 2005 and a letter acknowledging receipt thereof was sent to the complainant on 1 December 2005. On the same date a letter was dispatched to the respondent asking it to file a response to the complainant’s complaint by no later than 22 December 2005. On 17 January 2006 a response submitted on behalf of respondents, dated 14 December 2005, was received. On 23 January 2006 the complainant responded to this response. Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

1.3 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

2 Facts in brief

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Financial Manager: F Mantsho

The complainant complained about the results of the election of board members during the election of 2003, as well as about service delivery by the respondent's actuaries and consultants, and the respondents' insurers.

3. Complaint

3.1 The complainant's initial complaint was that the results of the 2003 election of board members, as conveyed by the IEI, reflected a certain TB Dhlamini as being the elected member for Phumelela Municipality, whereas he was not familiar with a person by that name. He also complained that enquiries to the IEI had elicited no response.

3.2 The complainant further complained about the quality of service delivery by the respondent's actuaries and its insurers, upon which he later elaborated after receipt of the respondent's response.

4 Response

4.1 In a response filed on behalf of the fund, the complaints are categorised as being against service delivery by the IEI, against the actuaries and insurers, and against the necessity of the appointment of service providers by the respondent.

Service delivery by IEI

4.2 The rules of the respondent fund provide that the legal adviser of the Fund, as appointed from time to time by the trustees, shall act as the IEI to oversee and manage the election of board members (trustees). These duties are set out in Rules 5 and 5A.

4.3 In a facsimile dated 7 December 2005 (attachment F1 to the respondent's response), the IEI explains that in the circular letter the initials of Mr Dhlamini were stated to be TB whereas it should be TS. The IEI further denies having received any correspondence from the complainant prior to the complaint being lodged with this Office.

4.4 It is further stated that as far as the election of Mr Dhlamini is concerned, the complaint has been overtaken by events as the results of the 2005 election were announced in October 2005.

Service delivery by actuaries and insurers

4.5 The respondent states that in the absence of any specific complaint, it is unable to respond. It further states that the utilisation of these

service providers is necessary to ensure that the Fund acts in the best interests of its members.

Necessity for the appointment of service providers

- 4.6 The respondent states that the IEI was appointed in terms of its rules, with specific reference to rules 5(2), 5(3), 5A and the definition of Independent Election Institution.
- 4.7 The respondent submits that this appointment was necessary for the proper functioning of the Fund in terms of its rules.
- 4.8 The respondents accordingly pray that the complaint be dismissed.

5 Complainant's response

- 5.1 In his response, the complainant provides more details about his dissatisfaction with the services provided by the actuaries and the insurers.
- 5.2 It appears that the complainant's application for early retirement based on ill-health was declined by the insurer during 2003. This has been the subject matter of complaints lodged with the Ombudsman for Long-term Insurance as well as the Public Protector.
- 5.3 The present complaint is not about the refusal of the application, but about the service received from the insurers, actuaries and the respondent fund during the process. The complainant also questions the necessity of the respondent engaging the services of such service providers.

6 Determination and reasons therefor

- 6.1 As elaborated above, the rules of the respondent fund provide for the appointment of an IEI to manage and oversee the election of board members. The failure to respond to the complainant's letters has been explained, as well as the identity of board member TS Dhlamini. The elections of 2003 have since been superseded by the elections of 2005.
- 6.2 Section 9A of the Act requires a fund such as the respondent to appoint an actuary.
- 6.3 Death and disability cover is arranged by the respondent fund for its members with an insurer which must in terms of the definition in rule 1, be an insurer registered in terms of the Long-term Insurance Act,

