



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House
Sandton Close 2, Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: 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
Website: www.pfa.org.za

Please quote our ref: PFA/WE/6709/05/NS

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”): AL HENDERSON (“the complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the payment of a retirement benefit by the respondent, a registered pension fund, specifically whether the complainant is entitled to receive the whole benefit as a cash lump sum.
- 1.2 The complaint was received on 6 December 2005. A letter acknowledging receipt thereof was sent to the complainant on 26 January 2006. On 27 January 2006 a letter was dispatched to the respondent giving it until 17 February 2006 to file its response to the complaint. The response was received on 9 February 2006. A copy of the response was forwarded to the complainant. A reply was received from the complainant on 6 March 2006.
- 1.3 After reviewing the written submissions, I consider it unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainant became a member of the respondent on 1 December 1990. The respondent is administered and underwritten by Sanlam Life Assurance Limited (“Sanlam Life” or “the insurer”). The complainant was

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrobbree (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), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

contributing to the respondent at a rate of R100.00. His monthly contributions were invested in a Sanlam Life policy (“the policy”) with certificate number 11589967x6 and an elected retirement date of 1 December 2003. It appears that in making his application for membership, the complainant was assisted by an independent financial intermediary.

- 2.2 In 2003 the complainant was informed that the underlying policy had matured and its maturity value was R26 257.00. He was further advised that he was entitled to receive a cash lump sum of R8754.00 and the balance would provide him with a monthly annuity of R226.30 because the maturity value exceeds the prescribed limit of R22 500.00.

3. Complaint

- 3.1 The complainant is aggrieved by the refusal of the respondent to pay him his entire benefit. He contends that he was not aware of the difference between a retirement annuity and an endowment product, since it was never pointed out to him by his financial adviser at the inception of his membership of the respondent.
- 3.2 The complainant states that he was advised by the respondent that on maturity of the underlying policy he would receive a monthly pension and a copy of the new policy document. He is dissatisfied that he has neither received his monthly pension nor a copy of his new policy document as advised by the respondent. In his reply, the complainant confirms that he has received the arrear payment together with his monthly pension. It is clear that this aspect of the complaint has now been resolved, therefore it will not be necessary to determine this issue.

4. The response

- 4.1 The respondent states that it has acted both in accordance with section 1 of the Income Tax Act 58 of 1962 and the provisions of the policy document in refusing to accede to the complainant’s request to pay out the full amount of the benefit.

5. Determination and reasons therefor

- 5.1 Rule 3.1 of Part 8 of the respondent’s rules provides as follows:

“Commutation

- 3.1 At most one-third of the pension intended in the preceding paragraph 1.1, can be commuted to a lump sum, but if the pension before

commutation does not exceed R1 800 per year or any other amount determined from time to time by the Minister of Finance in the Government Gazette, the full pension can be commuted.”

- 5.2 This condition is repeated in the schedule to the policy documents under a section with the heading “Maturity Benefits” and it is clearly stated therein that:

“A maximum of one third of the available amount may be taken in cash. The balance must be taken in the form of a pension.”

- 5.3 Had the complainant read the underlying policy document, he would not have overlooked this condition.

- 5.4 The respondent is a retirement annuity fund, and in order for it to reap the benefits of being approved as such, it has to comply with the provisions of the Income Tax Act, one of which is that its rules must provide for the payment of only up to a maximum of one-third of the value of the annuity payable to a member as cash, with the remainder being used to purchase a compulsory annuity. The respondent has complied with this requirement by incorporating by reference the provisions of the Income Tax Act in rule 3.1 of part 8 of its rules.

- 5.5 Section 13 of the Act provides that the rules of a registered fund are binding on the fund, its members, shareholders and officers, and on any person who claims under the rules or whose claim is derived from a person so claiming. Because of the binding effect of the rules on the fund, the fund may only pay out to its members those benefits provided for in its rules. That was emphasized by the Supreme Court of Appeal in *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA), at 239D-E, where Marais JA stated as follows:

“What the trustees may do with the fund’s assets is set forth in the rules. If what they propose to do (or have been asked to do) is not within the powers conferred upon them by the rules, they may not do it.”

- 5.6 The rules of the respondent do not provide for the payment of a benefit in a single lump sum, but rather limit the amount that may be taken as cash to a maximum of one-third of the benefit amount. The complainant is therefore not entitled to receive his benefit in any manner other than that set forth in the rules read in conjunction with the Income Tax Act, and accordingly the respondent cannot be directed to pay his benefit in cash.

- 5.7 The next issue concerns whether or not the financial advisor or intermediary who assisted the complainant gave him proper advice regarding this investment vehicle. Section 1 of the Act states that any complaint lodged with this office must relate to one of three aspects of a pension fund organization (as defined in the Act), namely, the

administration of the fund, the investment of its funds or the interpretation and application of its rules. Therefore the complainant needed to allege one or more of the above aspects. It is clear that this aspect does not constitute a “complaint” as defined in the Act because it relates to the conduct of the financial adviser and not the respondent. Any grievance in this regard should therefore be referred to the Office of the Ombud for Financial Services (“the FAIS Ombud”) which was established in terms of Section 20 of the Financial Advisory and Intermediary Act 37 of 2002. The FAIS Ombud’s contact details appear at the foot of this letter.

6. Relief

6.1 The complaint is dismissed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR