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Please quote our reference: PFA/WE/19337/07/KM

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 ("the Act"): H STEYN-KOTZE ("the complainant") v UNIVERSITY OF THE WESTERN CAPE RETIREMENT FUND ("the respondent")**

**1. Introduction**

- 1.1 The complaint concerns the refusal by the respondent, a registered pension fund, to pay to the complainant the pension interest awarded to her in terms of an order of divorce made on 26 February 2007.
- 1.2 The complaint was received on 31 October 2007 and a letter acknowledging receipt thereof was sent to the complainant on 11 December 2007. On 13 December 2007 a letter was dispatched to the respondent requesting it to submit a response to the complaint by no later than 14 January 2008. A response was received, dated 8 January 2008.
- 1.3 Having reviewed the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

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M Mohlala (Adjudicator), C Nkuhlu (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, Senior Accountant: F Mantsho

## **2. Complaint**

- 2.1 The complainant was divorced from Mr G F Kotze on 26 February 2007. At the date of divorce Mr Kotze was a member of the respondent. In granting the divorce, the court made an order relating to pension interest in the following terms:

“3.2 Dit word geboekstaaf dat Eiseres geregtig is op 33% van Verweerde se pensioenbelang soos op datum van egskeiding, welke persentasie aan Eiseres betaal sal word sodra enige voordele van Verweerde se pensioenbelang aan hom toeval, en ‘n aantekening tot dien effekte sal teen records van die pensioenfonds van Verweerde, die University of the Western Cape Retirement Fund, gemaak word.”

- 2.2 Pursuant to the Pension Funds Amendment Act 11 of 2007 (“the amendment”) the complainant informed the respondent on 5 October 2007 of her election to receive her portion of the pension interest as a cash payment. The respondent refuses pay her. The complainant therefore approaches this tribunal for assistance in obtaining payment to which she claims she is now entitled.

## **3. The response**

- 3.1 The respondent contends that the amendment, which allows non-member spouses to claim benefits from funds as at date of divorce only applies to divorces finalised after 13 September 2007. The respondent, having obtained legal advice on the issue, has decided not to pay out pension benefits to non-member spouses in cases where they were divorced before 13 September 2007.

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

- 4.1 On 3 October 2007 I issued a ruling in the case of *Cockcroft v Mine Employees Pension Fund* (case no PFA/WE/11234/LS as yet unreported), which concerned the application of the amendment to section 37D of the Pension Funds Act. This section, read with the amendment, has the effect of providing for the severability of the non-spouse’s share of the pension interest as at date of divorce.
- 4.2 Prior to that date section 7(8) of the Divorce Act 70 of 1979 only allowed the transfer of such portion of the pension interest to the other party when the member’s actual benefit accrued in terms of the rules of the fund. However, section 28(b)(i) of the amendment has added section 37D(1)(e)

to the Pension Funds Act, which now states that the date of accrual shall be deemed to be the date of divorce.

- 4.3 What had to be decided in the above case was whether the amendment applies to orders in respect of pension interest granted prior to the commencement date of the amendment on 13 September 2007.
- 4.4 For the reasons more fully set out in that determination, which can be found on our website at [www.pfa.org.za](http://www.pfa.org.za), I concluded that the amendment does apply to divorce orders issued prior to that date, although the right to demand separation of the pension interest granted to the non-member spouse only accrues with prospective effect. In other words, the right to claim the benefit only arises from the commencement date, and no additional interest (in the sense of growth) is payable on that pension interest in respect of the period from date of divorce to date of accrual of the right to claim.
- 4.5 In the present circumstances the complainant is therefore entitled to immediate payment of her portion of the pension interest. It is evident from the complaint that the complainant wishes to be paid in cash. The respondent has not contested that the complainant made this election on 5 October 2007 in terms of section 37D(1)(e)(iii) (although in the nature of its defence it obviously denies that it was a valid election). In terms of section 37D(1)(e)(iii) the complainant is entitled to payment within 60 days of making such election, failing which interest at fund rate becomes payable thereon (section 37D(1)(e)(v)).

## 5. **Relief**

- 5.1 The respondent is directed to pay to the complainant **within two weeks** of date hereof 33% of the pension interest of Mr G F Kotze as described in the divorce order, together with interest at the rate of fund return from 6 January 2008 to date of final payment.

Dated at Cape Town on this the \_\_\_\_\_ day of \_\_\_\_\_ 2008

Yours faithfully

**MAMODUPI MOHLALA**  
**PENSION FUNDS ADJUDICATOR**