Dear Mr. Ghela,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): P GHELA (“complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“first respondent”) AND SANLAM LIFE INSURANCE LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 This matter concerns the value of the retirement benefit which became payable on the complainant’s retirement.

1.2 The complaint was received by this tribunal on 16 May 2005. On 4 July 2005 a letter acknowledging receipt of the complaint was sent to the complainant. On the same date letters were dispatched to the respondents giving them until 25 July 2005 to submit their respective responses to the
complaint. A combined response was received from the respondents on 25 July 2005. On 29 July 2005 a copy of the response was sent to the complainant for a reply by 12 August 2005. A reply was received from the complainant on 17 August 2005.

1.3 On 10 August 2006 a copy of the complainant’s reply was sent to the respondents for their further response by 11 August 2006. A response was received on 14 August 2006. A copy of the response was sent to the complainant on 23 August 2006 for a reply by 30 August 2006. A reply was received from the complainant on 1 September 2006. No further submissions were received from the parties.

1.4 After considering the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appears below.

[2] FACTUAL BACKGROUND

2.1 On 1 August 1978, at the age of 29, the complainant became a member of the first respondent. The first respondent is administered and underwritten by the second respondent. The complainant’s monthly recurring contributions of R15.00, which were payable until 1 October 1978, were invested in policy 3487491x7 (“the initial policy”), which was issued by the second respondent. On 1 November 1978 the complainant’s monthly recurring contributions increased to R15.26, which were payable until 1 July 2013. The policy document further provided that the complainant’s recurring contributions will decrease to R14.54 on 1 August 2013, and this would continue until 1 July 2018. The complainant’s chosen retirement date was 1 August 2018.

2.2 On 1 March 1995, at the request of the complainant, the initial policy was converted to policy 15489505x6 (“the converted policy”). The cash value of R9 161.29 in respect of the initial policy was consequently transferred to the
converted policy. The complainant’s monthly contributions also increased to R75.00. The recurring monthly contributions were to escalate at a rate of 10% on 1 March 1996 and each subsequent year thereafter until 1 March 2004. As a result of the alteration the illustrative maturity values were recalculated at assumed illustrative bonus rates of 11% and 14%. The illustrative maturity values of R47 319.00 and R58 699.00 respectively, were subject to the proviso that contributions increased annually by 10%. In terms of the policy, the minimum maturity value is R18 155.00. The complainant’s chosen retirement date was changed to 1 March 2005 when he turned 55 years of age.

2.3 On 24 January 2005 the second respondent informed the complainant about his imminent retirement on 1 March 2005. The second respondent also advised the complainant that the retirement benefit that is payable on his retirement would be R38 309.67. The complainant chose not to retire because of the lower than expected retirement benefit, but rather to apply for a continuation of the converted policy. The second respondent consequently issued the complainant with policy 040848628x0.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the retirement benefit of R38 309.67 (which is lower than the altered illustrative maturity value), which he became entitled to on 1 March 2005.

3.2 According to the complainant he has since inception of his membership in the first respondent contributed approximately R17 933.00 to the second respondent.

3.3 The complainant also disputes the correctness of the cash value that was transferred from the initial policy to the converted policy. According to the complainant it was stated in the second respondent’s letter of 24 January 1996 that the cash amount was R13 738.00.
3.4 The complainant also questions the declared bonus rate of 2%, referred to in the second respondent’s letter of 17 February 2005, which the second respondent declared in October 2002 despite the policy document making provision for an investment guarantee rate of 4.5% per annum.

3.5 The complainant would like to know what happened to the terminal bonus and what its effect on the final retirement value was.

3.6 Lastly, the complainant is also dissatisfied with the erroneous information, in particular, as regards the cash value that was transferred and the final retirement benefit, that he received from the second respondent prior to lodging a complaint with this tribunal. The complainant states that the second respondent’s letter of 8 March 2005 stated that R1 876.65 was transferred to the converted policy whereas its letter of 30 March 2005 indicated that R9 161.29 was transferred. Furthermore, the second respondent’s letter of 30 March 2005 stated that the fund value as at 1 March 2005 was R39 084.72.

3.7 In light of the above, the complainant requests this tribunal to ascertain whether or not the retirement benefit of R38 309.67 is justified.

[4] RESPONSE

4.1 Preliminary point

4.1.1 The respondents raised a preliminary point that this tribunal does not have jurisdiction to investigate and determine this complaint because it constitutes “long term insurance business” as defined in, and regulated under, the Long-term Insurance Act No. 52 of 1998 (“the Insurance Act”) and not “pension fund business.” According to the respondents the complainant’s “grievance” is not about the execution of duties by the first respondent or the second respondent, in its capacity as administrator, but about the execution of duties by the
second respondent in its capacity as insurer in terms of the policy. Furthermore, the “grievance” is about a matter domestic to a “long-term policy” as defined in the Insurance Act. Therefore, it is part of the second respondent’s long-term insurance business (in its capacity as insurer), which is regulated by the Insurance Act.

4.1.2 The respondents further state that this is not a “complaint” as defined in the Act because the complaint is not about the maladministration of the fund by the board of management or by the second respondent in its capacity as administrator.

4.2 Response on the merits

4.2.1 The cash value transferred from the initial policy to the converted policy

4.2.1.1 The respondents advised that the cash value that was transferred to the converted policy was R9 161.29 and not the R1 876.65 figure that was quoted in the letter of 8 March 2005. The respondents further state that the complainant was advised about the correct cash value that was transferred by letter on 30 March 2005.

4.2.1.2 According to the respondents they cannot provide the complainant with a breakdown of the transfer value of R9 161.29 because the initial policy was a policy in the second respondent’s reversionary bonus series. This type of policy differs from the more conventional policies because an explicit income and expense account does not exist for policies in the reversionary bonus series.

4.2.1.3 As regards the cash amount of R13 728.00 that was quoted in the letter of 24 January 2006, the respondents
state that it was the maximum amount in cash that would have been paid as a lump sum to the complainant’s beneficiaries in the event of his death. The complainant had opted for life cover as well. The respondents further state that the complainant misinterpreted the death benefit amount as the amount that should have been transferred on conversion.

4.2.2 The minimum investment guaranteed rate and the terminal bonuses

4.2.2.1 The respondents advised that the investment growth of the policy is determined with reference to the actual bonus rates declared over the term of the policy rather than the illustrative rates. The respondents advise that this was stated in the converted policy as follows:

“Information supplied in this statement is subject to the provisions of the policy. The actual policy benefits afforded by the policy shall be determined by the actual bonus rates, cost recoveries and bases of calculation applicable from time to time.”

4.2.2.2 The respondents advised that the actual bonuses declared and the average mainstream inflation rates over the term of the converted policy were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Bonus declared</th>
<th>Average mainstream inflation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>14.5%</td>
<td>8.7%</td>
</tr>
<tr>
<td>1996</td>
<td>14.0%</td>
<td>7.3%</td>
</tr>
<tr>
<td>1997</td>
<td>12.5%</td>
<td>8.6%</td>
</tr>
<tr>
<td>1998</td>
<td>4.25%</td>
<td>6.9%</td>
</tr>
<tr>
<td>Year</td>
<td>Inflation Rate</td>
<td>Investment Rate</td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>1999</td>
<td>12.5%</td>
<td>5.2%</td>
</tr>
<tr>
<td>2000</td>
<td>10.5%</td>
<td>5.2%</td>
</tr>
<tr>
<td>2001</td>
<td>9.5%</td>
<td>5.7%</td>
</tr>
<tr>
<td>2002</td>
<td>2.0%</td>
<td>9.2%</td>
</tr>
<tr>
<td>2003</td>
<td>5.0%</td>
<td>5.8%</td>
</tr>
<tr>
<td>2004</td>
<td>6.5%</td>
<td>1.4%</td>
</tr>
<tr>
<td>2005</td>
<td>6.5% interim rate until 2005 rates declared</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

4.2.2.3 The respondents averred that when there is a decline in the inflation rate (see the column in paragraph 4.2.2.2 supra) there will be a decline in the investment returns because they move in line with inflation. In reality, there has been a decline in the inflation rates since the inception of the policy, so the growth over the term of the policy has also decreased. Although gross investment returns declined, this has been balanced by a decline in the inflation rate. As a result of the lower inflation rate, the member will probably receive a nominal amount that is less than the original illustrated values. However, since lower inflation rates means prices of goods increase less rapidly, the purchasing power of members should be on par, or even better than, when the inflation rate was high and higher returns were anticipated.

4.2.2.4 As regards the minimum investment guaranteed rate, the respondents confirm that the complainant is correct in that the (converted) policy document does make provision for the 4.5% investment guarantee. However, the respondents state that the minimum investment guarantee rate is represented by the minimum maturity
value of R18 155.00 that is guaranteed in terms of the policy document. The complainant received more than the minimum guaranteed amount.

4.2.2.5 According to the respondents the investment guarantee is also applicable on policy claims for death and disability. The respondents further state that the “Descriptions and Provisions” section of the policy document states the following in respect of the investment guarantee:

“3. INVESTMENT GUARANTEE

If the balance of the Investment Account is available at death or disability, it shall not be less than it would have been had investment bonuses been declared throughout at the guarantee rate indicated in the Schedule (with allowance for actual recoveries in respect of cost of cover).”

4.2.2.6 The respondents state that the gross retirement benefit included all the bonuses, including the terminal bonus, as stated in the policy document. This was stated in the policy documents as follows:

“In addition to the investment bonuses, policies in this bonus series also qualify for a terminal bonus. The terminal bonus depends on the market conditions when the claim arises.”

4.2.2.7 The respondents advised that the calculation of the retirement benefit was stated in the second respondent’s letter of 17 February 2005 as follows:

“The gross maturity value on 1 March 2005 is R38 309.67, calculated as follows:

Investment amount plus Bonuses = Gross maturity value
R18 500.25 + R19 809.42 = R38 309.67”
4.2.2.8 The terminal bonus was included in the “Bonuses” section of the above-mentioned computation. Further, the respondents advised that the complainant’s gross retirement benefit on 1 March 2005 was R38 309.65 and not R39 084.72 as stated in the letter of 30 March 2005. The amount in the letter of 30 March 2005 was incorrectly calculated by the second respondent and it apologised for the error.

4.2.2.9 Lastly, the respondents state that the complainant achieved a rate of return of 6.74% \textit{per annum} on his contributions, which is above the 5.60% return that he would have received had he invested his contributions in the mainstream inflation index.

4.2.2.10 The respondents confirm that they are satisfied that the second respondent acted in accordance with the provisions of the policy document.

[5] STATEMENT OF DETERMINATION AND REASONS THEREFOR

5.1 \textit{Points in limine}

5.1.1 Apart from addressing the merits of the complaint the respondents also raise two legal technicalities in their response by which they say the complaint must be dismissed. The first is that the pension funds adjudicator has no jurisdiction to consider this complaint because the first respondent is an audit-exempt retirement annuity fund with its only assets being the insurance policies it holds, on the life of its members, issued by the second respondent in its capacity as the first respondent’s underwriting insurer. Thus, the complaint concerns “long-term insurance business” rather than “pension fund business”.
The second is that this is not a complaint as defined in section 1 of the Act, so it should not even be considered by this office.

5.1.2 The preliminary points cannot succeed. The respondents are referred to two judgments of the High Court of South Africa, *viz.* *Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others* [2005] 8 BPLR 655(C) at 660C-E and *Old Mutual Life Assurance Company (SA) Limited v Pension Funds Adjudicator and Others* [2007] 1 BPLR 117 (C) at 124B-C, as well as the recent judgment of the Supreme Court of Appeal in the matter of *Mungal v Old Mutual* (56/09) [2009] ZASCA 141 (unreported). These court rulings confirm this tribunal’s jurisdiction to adjudicate complaints concerning retirement annuity fund members’ fund values and any charges levied by underwriting insurers and administrators on members’ contracts.

5.1.3 The merits of the complaint will now be considered.

5.2 *The merits*

5.2.1 This tribunal is satisfied that the complainant could not reasonably have believed that the cash amount of R13 738.00, referred to in the second respondent’s letter of 24 January 1996, would be the amount that would be transferred to the converted policy. This amount was the maximum amount in cash that would have been paid as a lump-sum to the complainant’s beneficiaries in the event of his death. The reason therefore is evident from the same letter, which also makes provision for the payment of a maximum cash amount of R9 576.00 in the case of the complainant’s disability, provided he chose to receive a cash amount.

5.2.2 Thus, the complainant was not entitled to have R13 738.00 transferred to the converted policy since it was the death benefit
5.2.3 As regards the minimum investment guarantee rate, the policy document states that the complainant shall not receive less than the “minimum maturity value” of R18 155.00 on his retirement. This was stated in clause 3 of the policy document, which provided that the balance of the investment account shall not be less than the “minimum maturity value.” In order to ensure that the “minimum maturity value” would be paid, the policy made provision for a minimum investment guaranteed rate of 4.5% per annum.

5.2.4 Thus, the minimum investment guaranteed rate was only applicable to the “minimum maturity value” and was not the minimum guarantee rate that would be declared throughout the complainant’s membership of the first respondent, but rather the average rate of return computed over the entire period of his membership. Since the average rate of return achieved was 6.74% per annum, the investment guaranteed rate of 4.5% was actually surpassed.

5.2.5 The final retirement benefit that became payable on the complainant’s retirement was dependent on various assumptions. For example, the second respondent quoted an illustrative retirement benefit that might become payable provided the assumed rates of return of 11% and 14% used to calculate the illustrative retirement benefit were declared throughout the complainant’s membership of the first respondent and also provided the complainant’s contributions increase annually at a rate of 19%.

5.2.6 However, the policy document under the heading “Provisions and Assumptions” made it clear that the actual benefits payable in terms of the policy is, amongst other things, dependent on the actual bonuses declared during the course of the complainant’s membership. The actual bonuses declared are shown in the table contained in paragraph 4.2.2.2. Since the actual rate of return was
less than the illustrative rates of 11% or 14% *per annum*, the complainant was only entitled to the actual rate of return rather than the illustrative rates.

5.2.7 In the light of the above this tribunal is satisfied that the investment guarantee rate of 4.5% was only a guaranteed rate for purposes of the “minimum maturity value” and not a guarantee rate that would be declared throughout the complainant’s membership of the first respondent. The actual rate of return was 6.74% *per annum*, and this surpassed the guaranteed rate of 4.5% as well as the average inflation rate during the period of 5.6% *per annum*. In the circumstances, the complainant’s final retirement value would, as per the policy document, be calculated with reference to the actual bonuses declared by the second respondent over the term of the converted policy.

5.2.8 Lastly, the terminal bonus which is payable at the maturity date, was included in the final computation of the complainant’s normal retirement benefit that became payable on 1 March 2005.

5.2.9 For the above reasons, this tribunal is satisfied that the complainant’s retirement benefit of R38 309.65 was correctly computed in terms of the provisions of the policy document and the first respondent’s rules.

[6] **ORDER**

1. The complaint cannot be upheld and is dismissed.
DATED AT JOHANNESBURG ON THIS THE DAY OF AUGUST 2010

_____________________________
CHARLES PILLAI
PENSION FUNDS ADJUDICATOR

Cc: Mrs. Dorea Ozrovech
    Principal Officer: Central Retirement Annuity Fund
    P O Box 1
    SANLAMHOF
    7532

    Fax: 021 957 1507

Cc: Mr P G Jonker
    Legal Advisor: Sanlam Life Insurance Limited
    % Mr C Bester
    Head: Policy Administration and Claims
    Sanlam Life Insurance Limited
    P O Box 1
    SANLAMHOF
    7532

    Fax: 021 957 1507

Registered Address of the fund:
2 Strand Road
BELLVILLE
7535

Section 30M filing: Magistrate’s Court
Parties not represented