Dear Madam

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): P DE LA REY (“complainant”) v FEDSURE STAFF EMPLOYEE BENEFIT SCHEME (“first respondent”) AND LIBERTY GROUP LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the date on which the complainant assumed membership in the first respondent.

1.2 The complaint was received by this Tribunal on 13 March 2012. A letter acknowledging receipt thereof was sent to the complainant on 26 April 2012. On the same date, letters were dispatched to the respondents requesting them to file their responses to complaint by 28 May 2012. Responses were received from the second respondent on 18 and 24 May 2012, and a copy thereof was sent to the complainant. Further submissions were received from the complainant on 12 June 2012.
1.3 Having considered the submissions before this Tribunal, it is considered unnecessary to hold a hearing in this complaint. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant is employed by Liberty Life (“the employer”). Prior to her employment with the employer, she was employed by Fedsure Life Assurance Company Limited. She was employed in the Individual Life Division, which was sold to Capital Alliance Life Limited. As a result of her employment, the complainant became a member of the first respondent. There was a section 14 transfer of the Fund to Capital Alliance Holdings Limited Pension Fund on 1 November 2001. Section 14 transfer was approved by the Financial Services Board (FSB) on 4 December 2002. The complainant’s transfer value amounted to R118 497.16.

[3] COMPLAINT

3.1 The complainant is dissatisfied that the first respondent’s records incorrectly reflect that he joined the employer and the fund’s membership on 1 August 1988 despite her having joined in 1983. She submits that she joined the employer in 1983 and commenced contributing to a fund immediately. In 1989 she requested her position to be made half day and her request was declined. Subsequent to that she resigned. However, her employer requested her to assist until they hire a permanent replacement. She was employed as temporary staff member for five months and she did not contribute to the fund for that duration. She did not withdraw from the first respondent as well.

3.2 She was re-employed and continued contributing to the first respondent. Fedsure was taken over by Capital Alliance and she was
now employed by the latter. Capital Alliance furnished her with letter of appointment indicating her date of employment as 1 August 1988. There was investigation by human resources department in this regard, which confirmed her year of employment as 1983. She was furnished with another correspondence dated 28 September 2001, confirming same. She has never claimed from Unemployment Insurance Fund and the first respondent. She submits that she joined the employer in 1983 and commenced contributing to a fund immediately. She demands her contribution and interest thereof for a period of five years. She questions the whereabouts of the contributions she made prior to joining the current employer.

[4] RESPONSES

First and Second Respondent's Response

4.1 The second respondent submitted a response and confirmed background facts as summarised above. It submits that the first respondent’s records were captured on a new database from 1 December 1999, this system formed the basis of pension fund administration moving forward. The first respondent was administered in the Group Benefits Division of the Fedsure Life Assurance Company Limited. The division was sold to the second respondent, however, the staff responsible for the administration of the Fund were retrenched and the second respondent continued to be responsible for ongoing fund administration from 2001.

4.2 The administrators, Actuary, Trustees and Principal Officer continued to be responsible for the first respondent based on the available records. The fund surplus apportionment scheme “Scheme” date was set at 1 January 2004. As part of the member tracing exercise, the first respondent launched an intensive search of all the Fedsure and Investec archives. Former member records could only be traced back
to 1990. A media advertising campaign was also launched to trace all former members and request membership information where applicable. The Trustees in consultation with the actuary agreed to base the scheme on the available records and requested all former members who had left the first respondent prior to 1990 to provide satisfactory proof of membership and details.

4.3 The scheme was placed under the jurisdiction of a tribunal and the tribunal accepted that the Fund records only dated back to about 1990. The Fund actuary prepared the scheme on the basis of the available data and noted this is the scheme’s submission to FSB. The FSB approved the scheme’s submission in January 2011. They cannot trace any record of the complainant’s pension fund membership for the period 1 June 1983 to 28 February 1988 because of lack of records going back that far. There is therefore no record of withdrawal being processed.

4.4 It submits that it is worth noting that she avers first resigning on 28 February 1988 and then re-joining on 1 August 1988. Nevertheless, the member’s line manager at Fedsure confirmed a continuance of employment between 1983 and 2001. The first respondent did not receive this correspondence at the time of updating records or perform any other administration function relative to this additional period of membership. It is also worth noting that this letter was sent at the time the Life Division was sold to Capital Alliance in 2001. The first respondent records reflect a pensionable service date of 1 August 1988.

4.5 The matter was extensively debated by the Trustees based on the member’s assertion that her pensionable service date was 1 June 1983. The first respondent made a decision based on whether there was enough evidence to substantiate the backdating of her pensionable service date and what the impact will be on the scheme. It responded to
the complainant on 22 November 2011, and it requested the member to find data to support her position only because of the dearth of available data prior to 1990. It is neither possible to prove whether there was a membership record nor a withdrawal benefit paid. The complainant received benefit statements but did not query either her pensionable service date or the unpaid claim prior to her communication around the scheme.

4.6 The second respondent submitted another response and stated that it paid the complainant one third of her benefit calculated as per the instruction received on 30 May 2005. The payment amounted to R27 108.32. The remainder of R85 875.46 was transferred on the same day to Liberty Individual Contracts division to purchase a monthly pension according instruction received from the complainant. The second respondent only took Fedsure Retirement Funds in October 2005, and it did not process any payments. Unfortunately it does not have any records in this matter.

Complainant’s Further Submission

4.7 The complainant submitted further submission and reiterated submissions she made in her complaint letter received by this Tribunal on 13 March 2012.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complainant is dissatisfied that the date on which she assumed employment and membership of the first respondent is incorrectly recorded by the first respondent. The second respondent submitted that there was a section 14 transfer of all affected members to Capital
Alliance Holdings Limited Pension Fund on 1 November 2001. The section 14 transfer was approved by the Financial Service Board.

5.2 The Registrar will not issue a certificate of approval in terms of section 14(1)(e) of the Act until he is satisfied that all the requirements in terms of sections 14(1)(a) to (d) of the Act have been met. One of the conditions that the Registrar had to be satisfied with is that the scheme should be reasonable and equitable and accord full recognition to the rights and reasonable benefit expectations of the members transferring in terms of the rules of a fund where such rights and reasonable benefit expectations relate to service prior to the date of transfer.

5.3 In previous determinations of this Tribunal (see Fondse and Denel Aftree Regsfonds v Denel Retirement Fund & Others [1999] 9 BPLR 44 (PFA)), this Tribunal has held that the Adjudicator lacks the jurisdiction to investigate and adjudicate upon any complaint relating to the validity of a scheme in terms of section 14(1) of the Act if the Registrar has already issued a certificate in terms of section 14(1)(e). The same applies to the situation were the application for transfer has already been lodged, but is pending the approval of the Registrar. Therefore, this Tribunal has no jurisdiction to adjudicate this matter.

5.4 The respondents submitted that they can neither confirm nor deny the date the complainant assumed membership of the first respondent due to unavailability of data prior to 1988. They requested the complainant to submit the relevant information in her possession to assist them to restore her date of becoming the member of the first respondent. This Tribunal advise the complainant to assist the respondents in this regard to resolve this matter.

[6] ORDER
1. Based on the available information, the complaint cannot be upheld and is dismissed.

DATED AT JOHANNESBURG ON THIS 6TH DAY OF AUGUST 2012

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M A LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M filing: Magistrate’s Court
Parties unrepresented