

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/47/98/NJ

In the complaint between:

H C Michels

Complainant

and

Aandele-gekoppelde Uittredingannuiteitfonds

First Respondent

Old Mutual Unit Trust Managers Limited

Second Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF
1956**

Introduction

This is a complaint lodged with the Pension Fund Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956. The complaint relates to the manner of payment of a life annuity.

After an exchange of correspondence between the complainant and the respondents, consisting of a number of letters and other documentation, the complainant lodged a complaint with my office on 3 March 1998. Hereafter, there was also an exchange of correspondence between the complainant, the Registrar of Financial Institutions and Financial Services Board. No hearing was held in this matter. Accordingly, in determining this matter, I have relied exclusively on the documentary evidence, arguments put to me in writing and a report placed before me by my investigator, Naleen Jeram.

The complainant is Horst Clemens Michel, a member of the first respondent of Rietfontein, Pretoria.

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The first respondent is Aandele-gekoppelde Uittredingannuiteitfonds, (hereinafter referred to as "AGUAF") a pension fund duly registered under the Pension Funds Act of 1956. AGUAF is administered by the second respondent.

The second respondent is Old Mutual Unit Trust Manager Limited reg. no. 65/08471/06 (hereinafter referred to as "the administrator"). The second respondent is a wholly owned subsidiary of South African Mutual Life Assurance Society. The respondents have been represented by Mrs Annalien Pelser of the administrator, who is also one of the trustees of AGUAF.

Complaint

This complaint relates to the administration of AGUAF and alleges that as a result of maladministration of the fund by the fund the complainant has sustained prejudice.

In about May 1997 the complainant approached AGUAF and the administrator with the view to investing his funds maturing from a retirement annuity policy. The complainant decided to invest an amount of R489,643.60 in a life time annuity offered by AGUAF. The administrator invested this lump sum in five different unit trust funds. The complainant in turn received a monthly annuity commencing on 1 July 1997.

The material terms (as set out in the contract between the parties) of this arrangement were as follows:

Deel A. KONTRAKBESONDERHEDE

Die aansoekvorm en enige ander aansoekdokumente vorm die enigste basis van die ooreenkoms wat in hierdie kontrak vervat word.

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1. SKEDULE VAN BESONDERHEDE

Tipe annuiteit:	Verpligte koop	
	Enkel Lewe	
	Veranderlike annuiteitpaaieiment	
Annuitant:	H C MICHELS	
	Gebore 9 April 1935	
Benoemde(s):	P E MICHELS	
Koper:	Aandele-Gekoppelde Uittredingannuiteitfonds (AGUAF)	
Onderskrywer:	Ou Mutual	
Aanvangsdatum:	1 Julie 1997	
Aanvanklike aanuiteitperentasie:	15.00%	
*Bruto annuiteitpaaieiment:	R5,875.00	MAANDELIKS

*Toepaslike belasting sal deur Ou Mutual van die bruto annuiteitbedrag afgetrek word.

2. ANNUITEITPAAIEMENTE BETAALBAAR DEUR OU MUTUAL

Die annuiteitpaaieimente is betaalbaar in die Suid-Afrikaanse geldeenheid by OU MUTUAL se hoofkantoor in Pinelands binne vyf werkdag na die 1ste van die maand.

Die annuiteit is betaalbaar in paaieimente (MAANDELIKS) vanaf die 1 Augustus 1997 tot en met die eerste dag van die maand waarin die annuitant sterf.

3. BEDRAG AAN OU MUTUAL BETAAL

Eenenkele paaieiment van R489,643.60 is deur die onderskrywer ontvang op 1 Julie 1997 in die Suid-Afrikaanse geldeenheid.

The complainant is dissatisfied with the precise date on which his bank account is credited with the annuity payment. He argues that the units are repurchased by the administrator on the first day of every month in order to pay an annuity to the complainant. Often his account is credited only a few days later. He further states:

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Why is it possible for the first respondent to prepare withdrawal of units from my account on a non-working day like 1.1.1999, if the first working day of the first respondent is 4.1.1999, but it is not possible for him to plan immediate payment, and he requires 5 more days? Even if non-intentionally, being then in possession of units without having actually repurchased them is very flattering to a balance sheet for that period. These units are my property till the time they are paid for.

If the first respondent deals online with his bank, it would take a few minutes for a few thousand transfers to be effected and the cash to be in the beneficiaries' accounts. Even if the first respondent is still resorting to a Mag Tape when dealing with his bank, each tape carries a transaction date that is used to credit the beneficiaries' accounts.

Mrs Pelsler, acting on behalf of the respondents responded as follows:

Unit Trust companies are not allowed to buy or sell units on credit. We are price bound and cannot process any transactions before the daily price is available. It is for this reason that our payment out can take up to five working days before the annuitants' bank account is credited. I enclose a copy of our contract. Institutions other than Unit Trusts can prepare the annuity payment at any stage during the month and credit the annuitants' bank account on a specific date.

Regarding the payment for January, the first working day after the 1st of January on which unit trust prices were available was Monday the 5th. This resulted in the funds only being available 4 days later.

To alleviate the problem for annuitants in receiving their income so late, we have created an additional repurchase date of the 24th. Processing the repurchase on the 24th will ensure that the funds will always be credited to an annuitants' account by the last day of the month.

The complainant seeks the following relief:

- < That the period after the repurchase of units by the first respondent, in which payments is made into the complainant's bank account is reduced to less than 5 working days, taking the progress of modern banking methods into account.
- < That the definition of working day includes Saturdays, being days Banks are normally open for business.

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- < That in the case of the first respondent exceeding that period, interest at the current lending rate is to be paid to the complainant by the first respondent for the excess time and at the same date the delayed payment is made.

- < That the period for re-investment is reduced to 0 (zero) days, as this is an internal transfer only which could be done into the complainant's account with the first respondent instead of the first respondent's own account.

- < That in the case of the first respondent exceeding that period, interest at the current lending rate is to be paid to the complainant by the first respondent for the excess time and at the same date the delayed re-investment is made.

Analysis of evidence and argument

The sole issue for determination is the reasonableness of the payment period within which the respondents pay the annuity. The question is expressly regulated in the contract between the parties. Clause 3 of the contract disposes of the issue, therefore I quote it in full again:

Die annuïteitpaaieimente is betaalbaar in die Suid-Afrikaanse geldeenheid by OU MUTUAL se hoofkantoor in Pinelands binne vyf werkdade na die 1ste van die maand...

In terms of this clause it is more than clear that the respondent can pay the annuity within 5 working days of the first day of each month. This is clearly reasonable and an acceptable practice for the reasons explained by Mrs Pelser. In fact, the respondent's conduct has been worthy of utmost praise. Even though in terms of the contract it has this 5 day period to make payment, it went out of its way to accommodate the needs of annuitants by changing the repurchase date of unit trust to the 24th day of the prior month to ensure payment on the first day of the subsequent month. Thus, the manner of payment of the annuity was in accordance with the annuity contract between the parties. Hence, I find the complaint to be baseless and frivolous and is accordingly dismissed.

DATED at CAPE TOWN this 1st day of September 1999.

John Murphy
Pension Funds Adjudicator