

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/WE/248/98/IM

In the complaint between:

**A LIGHT**

**Complainant**

and

**SOUTH AFRICAN MUTUAL LIFE ASSURANCE**

**SOCIETY PENSION FUND**

**Respondent**

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

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**Introduction**

This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956.

The respondent is a defined benefit fund duly registered in terms of the Pension Funds Act of 1956.

The complainant is a pensioner who retired as a member of the respondent on 31 March 1995 and is in receipt of a pension in terms of its rules.

The complaint concerns the actions of the respondent in determining the value of its liabilities transferred in respect of pensioners to a new fund, the Old Mutual Staff Retirement Fund (“the Retirement Fund”) on 1 January 1997, as part of a major reorganisation of the employer’s retirement funding arrangements from a defined benefit to a defined contribution basis. The complainant alleges unfair discrimination in that normal

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pensions secured on a defined benefit basis under the fund were increased by 30% on transfer whereas pensions secured by additional voluntary past service contributions by employees on their own behalf were transferred at face value.

The complainant first lodged his complaint with the respondent in December 1997 and in a series of correspondence with the respondent between then and October 1998 it was amended and amplified until his formal complaint was lodged with my office on 16 October 1998. A copy of the complaint was lodged with the respondent on the same day.

At the request of Mr Ian McDonald, senior investigator at my office, Mr Malcolm Rhodes, the principal officer, responded on behalf of the respondent in a letter dated 7 May 1999.

The issues emerge clearly from the written submissions and I have decided to base my determination on these and the report of Mr McDonald, without the use of a formal hearing.

I have determined the complaint as follows, for the reasons set out herein.

### **The complaint**

During his membership of the respondent the complainant made additional voluntary contributions in terms of the rules in order to secure a higher ultimate pension for himself. Although the respondent is a defined benefit pension fund these voluntary contributions were applied on a defined contribution or money purchase basis within the fund. That is to say they were recorded separately from normal contributions to the fund and increased by bonuses declared by the fund up to the complainant's retirement on 31 March 1995, at which time they were applied to secure an additional pension. After taking one third in cash, the remaining voluntary contributions provided the complainant with an additional pension of R122,01 per month, which would receive cost of living increases thereafter.

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With effect from 1 January 1997 the respondent gave all its members, including pensioners, an option to transfer to the Retirement Fund subject to receiving an increase of 30% in their normal defined benefit pensions. Pensions secured by additional voluntary contributions did not receive the 30% increase, and this fact was clearly stated at the time.

Up until then, pensioners had received cost of living increases each year on 1 July.

In view of the 30% adjustment as at 1 January 1997 no increase was to be granted for the period from 1 July 1996 to 31 December 1996, but pensions - including the 30% increase already granted where applicable - would be increased by a further 7% from 1 July 1997 under the new arrangement in respect of the period from 1 January 1997 to 1 July 1997. Thereafter all pensions would increase contractually on 1 July each year, at a rate determined by the investment performance of the Old Mutual Pensions Optiplus product.

The complainant elected to transfer to the new arrangement, but then complained that the pension secured by his voluntary contributions having not received the benefit of the 30% incentive increase, should have received a normal increase for the period 1 July 1996 to 31 December 1996, which it had not. He went on to claim that in the circumstances his voluntary pension should have received an increase reflecting the difference between the actuarial rate of return of 3.7% used in calculating the amount of pension secured by his voluntary contributions and the actual fund rate of return over the period.

On 14 August 1998 the respondent wrote to the complainant advising him, among other things, that it had agreed to increase all voluntary pensions for the period 1 July 1996 to 31 December 1996, for those pensioners who had agreed to transfer to the Retirement Fund, by the same amount as they would have received had they remained members of the respondent. The complainant was not satisfied with the amount of the increase or with the considerable amount of explanatory detail included in the letter, so he then re-formulated his complaint and lodged it with my office in a letter dated 16 October 1998.

Although the complainant spent his whole career in the employee benefits business, his letter of complaint fails to focus on the specific issues and tends to wander from comment to comment as if in search of some significant malpractice by the respondent that has unfairly discriminated against him. The complainant infers that his personal preferences as to how the transfer should have been managed would have been more correct than the actions actually taken by the respondent on the advice of their actuaries and legal advisers at the time, to his detriment. He is aggrieved by the overall approach adopted by the respondent in providing the 30% incentive to accept the transfer proposal, but at the same time feels that he, and others in his circumstances, should have received more. In summary his complaint is:

1. That the level of increase granted to his voluntary pension for the period from 1 July 1996 to 31 December 1996 was insufficient.
2. That voluntary pensions should also have received the 30% increase.
3. That a 30% increase should also be granted on the amount of any pension previously commuted for cash at their date of retirement, for all surviving pensioners.
4. That the managing committee of the respondent have not exercised their minds appropriately on the above issues.

### **The response of the respondent**

In his very comprehensive response on behalf of the respondent, Mr Rhodes has given in-depth background information as to how and why the fund took the action it did in dealing with the transfer, including a report by the valuator to the fund, Mr Chris Newell, and a copy of the proposals put to the management committee in addressing Mr Light's original complaint. Their response to the four complaint issues outlined above can be summarised as follows:

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1. Increase granted on voluntary pension.

Increases granted to voluntary and compulsory pensions during the period from January 1986 to 30 June 1997 marginally exceeded the investment surplus on pension reserves. The increase granted for the period 1 July 1996 to 31 December 1996 was calculated on the same basis as, and was equivalent to, the increase that would have been received had the complainant remained a member of the respondent.

2. Should voluntary pensions have been granted the 30% enhancement?

The 30% enhancement came from a surplus that had arisen in the fund due to differences between the actual experience of the fund and the assumptions made by the actuary in calculating the contributions required to provide the defined benefits promised in its rules. Additional voluntary contributions, however, did not contribute to this surplus as they had been invested separately and had already received the full growth that their investment had achieved as at the date they were applied to purchase pensions when members retired.

3. Should commuted pensions have benefited from the 30% enhancement?

The decision to restrict the 30% enhancement to those still in receipt of compulsory pensions and to the amount of pension being received at the effective date was taken by the managing committee as it was felt to be in line with current industry practice, as well as being the most equitable solution. In addition it would not have been practical to try to accurately identify and quantify commutations dating back many years. It was felt that the method adopted ensured that the members electing to transfer to the Retirement Fund were receiving their legitimate share of the surplus.

4. Did the managing committee apply itself appropriately?

During the period in question the make-up of the managing committee was in transition pending the election of member elected representatives in October 1998.

It did, however, contain members appointed to represent the interests of members. As trustees of the fund, the committee members were required to fulfil their duties impartially and in the best interests of all the members. Evidence in the response and attached annexures indicates that they did apply themselves appropriately to the complaint of the complainant, as well as to the wider issues of the transfer.

**The determination**

It is indeed unfortunate that even after a long association as both member and pensioner there appears to be a lack of trust between the complainant and the respondent. This mistrust manifests itself more in the underlying innuendo of the complaint than in any outright allegation of malpractice. There are many different ways that a fund can address a reorganisation of the nature undertaken here, and it is almost inevitable that some of those members and/or pensioners affected will feel that they could have fared better from the exercise. Especially in an organisation that is involved in pension matters on a daily basis, and some of whose members have been involved in similar arrangements for pension fund customers. It is equally inevitable that a different approach could have raised similar objections from a different set of affected parties. It is perhaps true to say that in these circumstances a fund cannot possibly please all of the people all of the time. The question to be addressed, then, is whether the fund and its managing committee in particular, acted properly and equitably in the interests of all its members in applying the various options available to it in the reorganisation and redistribution of assets and liabilities which it undertook.

I can find no evidence in the submissions of the parties concerned to suggest that the fund unfairly discriminated against the complainant in any of its actions or that it failed to

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address any of the issues concerning the transfer appropriately.

For the foregoing reasons the complainant's complaint is dismissed.

**DATED at CAPE TOWN this 30<sup>th</sup> day of JUNE 1999.**

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**John Murphy**

Pension Funds Adjudicator