1. This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act 24 of 1956 (hereinafter referred to as “the Act”). The complaint relates to whether the respondent, a retirement annuity fund, may pay a retirement benefit prior to the member attaining the age of 55 years.

2. An investigation was conducted by my investigator, Naleen Jeram. Accordingly, in determining this matter I have relied exclusively on the documentary evidence and submissions gathered during the course of Mr Jeram's investigation.

3. The complainants are a group of persons, who are currently unemployed and members of the respondent. The complainants are represented by Mr Brown and Mrs Boyle of Brown's Insurance Brokers CC.

4. The respondent is South African Retirement Annuity Fund, a pension fund duly registered
under the Act (hereinafter referred to as “the fund”). The fund falls within the ambit of paragraph (a) of the definition of "pension fund organisation" contained in section 1 of the Act. The object of the fund is to provide life annuities for members or annuities for widows, children, dependents and nominees of deceased members. The rules of the fund allow its board of management to apply to the underwriter (Old Mutual) to issue policies in favour of the fund on the lives of the members. The fund collects contributions from the members and in turn pays them over to the underwriter. A member may decide what contribution he/she wishes to make to the fund, subject to certain conditions laid down by the insurer with whom the fund concludes the policy contract. Contributions start at the inception date of membership, and are payable as the board of the fund agrees with the underwriter. All monies payable by the underwriter in terms of the provisions of the policy are paid to the fund. The board, in turn deals with the payment of benefits in accordance with the rules of the fund. Upon attaining membership of the fund, a certificate is issued to each member by the underwriter setting out the benefits and conditions applicable to the benefits. In this matter, the fund is represented by Mr Pierre Theron, of Old Mutual (legal division), the underwriter and administrator of the fund.

5. The complainants were members of the Minerals Binders Clays Pension Fund until February 1993 when the said fund was liquidated and dissolved. The members of this fund had the option of either receiving their early withdrawal benefits or joining the new union pension fund or to transfer their withdrawal benefits to a retirement annuity fund. The complainants elected to transfer their benefits to the fund. In addition to the early withdrawal benefits being transferred to the fund, the complainants' employer Mineral Binders Clay (Pty) Ltd (hereinafter referred to as “MBC”) agreed to pay half the monthly premiums/contributions to the fund. During 1997 MBC experienced financial difficulties and was liquidated in September 1997.

6. The complainants' respective values in the fund as at 21 July 1997 were as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Old Mutual</th>
<th>Current</th>
<th>Current</th>
<th>Estimate</th>
<th>Age at</th>
<th>Lump Sum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Inception Date</td>
<td>Monthly Premium</td>
<td>Death Value</td>
<td>Maturity Value</td>
<td>Maturity</td>
<td>Transferred from Pension Fund</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------</td>
<td>-------------</td>
<td>----------------</td>
<td>----------</td>
<td>------------------------------</td>
<td></td>
</tr>
<tr>
<td>M Tshabalala</td>
<td>01/04/1993</td>
<td>290.00</td>
<td>54,194</td>
<td>393,079</td>
<td>55</td>
<td>17,286.81</td>
</tr>
<tr>
<td>G Shongwe</td>
<td>01/04/1993</td>
<td>205.00</td>
<td>57,100</td>
<td>285,194</td>
<td>60</td>
<td>21,655.86</td>
</tr>
<tr>
<td>JA Baloyi (Sibisi)</td>
<td>01/04/1993</td>
<td>168.00</td>
<td>2,027</td>
<td>126,060</td>
<td>55</td>
<td>5,568.51</td>
</tr>
<tr>
<td>J Sepenyane</td>
<td>01/04/1993</td>
<td>170.00</td>
<td>18,094</td>
<td>413,221</td>
<td>60</td>
<td>4,347.84</td>
</tr>
<tr>
<td>AM Modiga</td>
<td>01/04/1993</td>
<td>218.00</td>
<td>12,764</td>
<td>111,466</td>
<td>55</td>
<td>2,375.04</td>
</tr>
<tr>
<td>DR Mathebathe</td>
<td>01/08/1993</td>
<td>131.00</td>
<td>8,470</td>
<td>838,492</td>
<td>60</td>
<td>Nil</td>
</tr>
</tbody>
</table>

In respect of Mr DR Mathebathe, the fund received an early withdrawal benefit from a different pension fund.

7. After the liquidation of MBC in 1997, all the complainants experienced financial difficulties and were unable to procure further employment. As a result they were unable to continue paying their premiums or contributions to the fund.

8. Accordingly, the fund made the benefits of the complainants paid up in terms of rule 18, which reads:

18. On non-payment (in respect of any one Certificate issued to a Member in terms of Rule 11) of periodic contributions or instalments thereof to the Fund within the days of grace allowed by the Underwriter, such Member shall be deemed to have discontinued contributions and shall retain such fully paid-up reduced benefits under that Certificate as the Underwriter shall determine.
Contributions may be recommenced within 36 calendar months of discontinuance subject to such requirements as the Underwriter may specify. On such recommencement the Member's prior discontinuance of contributions shall cease to be of any effect.

Thus, the fund has in effect preserved the complainants' benefits until the respective benefits become due in terms of the rules of the fund.

9. In terms of the rules of the fund, the complainants are entitled to the following benefits:

**BENEFITS**

15. Each Member's contribution shall be applied in purchasing a retirement annuity on such Member's life in accordance with this provisions of the Annuity Policy.

15(bis) Subject to the provisions of the Annuity Policy, a Member, his dependent or other beneficiary may request in writing that the Fund transfers his right to such annuity to a retirement annuity fund which is registered and tax-approved under the laws of South Africa. On receipt of such request the Fund shall direct the Underwriter to transfer to the retirement annuity fund thus nominated (sic) a capital sum representing the value of the annuity, the right to which is being transferred; provided that no such transfer shall be effected prior to the date on which the annuity is due to commence.

Following such transfer, neither the Member nor any person whose rights derive through him shall have any further claim against the Fund. A transfer in terms of this Rule shall absolve the Fund and the Underwriter from all administrative obligations in relation to the rights transferred, including
those related to the taxation of annuities.

16(a) In the event of the death of the Member...(death benefit).

17. The Member shall have the option of commuting for a single payment not more than one-third of the life annuity to which he is entitled, subject to the conditions as set out in the Annuity Policy.

Where, however, the aggregate of all life annuities payable under the Fund to a Member is equal to or less than the amount prescribed by legislation from time to time, the Member shall be entitled to commute all such life annuities subject to the conditions set out in the Annuity Policy.

10. Thus, the actual benefit is set out in the relevant annuity policy of the respective complainant. In each instance, the retirement benefit shall only become due upon the member attaining the age of 55. The selection of 55 years of age is in accordance with the provisions of the Income Tax Act of 1962. In terms of the Income Tax Act, the benefit from the retirement annuity fund may not be paid before the member attains the age of 55 unless he becomes permanently disabled.

11. Mrs Boyle acting on behalf of the complainants argues that the complainants are in extreme financial difficulty and request some form of payment of the benefit from the fund. Mr Theron, acting on behalf of the fund, contends that the fund is not in a position to help the complainants make any withdrawals prior to them attaining the age of 55. In the event of the fund doing this it would risk the withdrawal of its tax approval from the South African Revenue Services.

12. The rules of the fund are clear. They do not provide for an early withdrawal benefit. The only benefits are retirement benefits upon the members reaching the age of 55 (or later up to
70 years of age) and death benefits.

13. Rule 15(bis) does allow for the transfer of a benefit. However, such a transfer would have to take place to another "retirement annuity fund". Further, in terms of the rule, the benefit may not be transferred prior to the date on which the annuity becomes due. Any annuity in a retirement annuity fund will only become due upon the member attaining the age of 55 years. Since none of the complainants have attained this age, this rule is of no assistance to them. As I stated in Nair v The Natal Witness Group Pension Fund & Others (PFA/KZN/211/98) and Magerman & Others v OKiep Kopper Maatskapy Beperk Groep (PFA/NC/1/98), where the rules of the pension fund are subject to the provisions of the Income Tax Act even though they may cause unintended hardship to the complainants largely due to their extraordinary circumstances, they nevertheless must be adhered to.

14. In terms of the rules of the fund, the complainants are only entitled to a retirement benefit upon them attaining the age of 55. As stated, none of the complainants have attained this age. Accordingly, they are not entitled to a withdrawal at this stage and the complaint is dismissed.

Dated at CAPE TOWN this 8th day of February 2000.

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John Murphy
Pension Funds Adjudicator