1. This is a complaint lodged with the Pension Funds Adjudicator on 19 June 2001 in terms of section 30A (3) of the Pension Funds Act of 1956 ("the Act"), concerning the objection of some members of the fund to the payment of unclaimed monies in the fund, on its dissolution, to the Guardian’s Fund. No hearing was held in this matter and in making this preliminary determination I have relied on the documentary evidence and submissions and on the investigation of the complaint by the deputy adjudicator, Sue Myrdal, under my supervision.

2. The complainant, R Nkosi, a member of the Acrytex Retirement Fund (in liquidation) ("the fund") states that he lodges the complaint on his own behalf and also on behalf of other members of the fund. Responses have been received from Mr Charles Pretorius of the Registrar’s office and from Ms Robyn Hodges of Alexander Forbes, which is involved through the appointment of Mr F Knoetze of Alexander Forbes as the liquidator.

3. It appears that some 3835 deferred members of the fund were erroneously not transferred from the records of the erstwhile administrator, Old Mutual, to Sanlam when Sanlam took over the administration of the fund in 1990. This was only
discovered just before the fund was placed in liquidation in 1999. These members were therefore still members of the fund, although, as the liquidator has stated:

The current members of the fund did not view the paid-up (Mutual) members as part of the (Sanlam) fund since they practically never were. Furthermore the largest portion of the balance in the reserve account originated after the administration of the fund was moved from Mutual to Sanlam. The Sanlam members, therefore, regard the surplus in the reserve account as theirs and not to be shared with the Mutual members.

4. According to the liquidator, clause 15.(2) of Part II of the rules of the fund provides that unclaimed amounts upon the dissolution of the fund are to be forfeited and paid to those qualifying members who actually receive a liquidation payment. The liquidator has advised that many unsuccessful attempts had been made to trace the paid up members of the fund and to pay benefits to them; he therefore enquired of the Registrar whether there was any possibility of paying the unclaimed monies, in terms of the rules of the fund, to the other members. The Registrar replied as follows in a letter dated 26 November 1999:

The Pension Funds Act and therefore also the Companies Act overrules the rules of the fund. In terms of section 410(2) of the Companies Act, 1973, the liquidator shall pay any unclaimed monies to the Master for deposit in the Guardian’s Fund for the account of the member concerned.

5. The complainant states that the members “finally accepted this decision because we didn’t know where to lodge a complaint”. They have now complained to my office, arguing that if, after extensive advertising (by newspaper and radio announcements) of the preliminary liquidation account, the deferred members did not come forward, there is no likelihood that they will do so in the future, and requesting that the monies be paid in terms of the rules of the fund.
6. Ms Robyn Hodges has raised a point *in limine* concerning the jurisdiction of this office to deal with the complaint. She points out that the complaint relates to the distribution of unclaimed benefits in the liquidation and distribution account. She submits that, since the fund was placed in liquidation on 1 September 1999, there can be no “complaint” in terms of the Pension Funds Act since there is no fund, and that this office has no jurisdiction over funds that have been liquidated in terms of section 28 of the Act. Mr Charles Pretorius of the Registrar’s office has also submitted, on 7 November 2001, that

“This Office advises that the preliminary accounts were confirmed and payments to the beneficiaries approved. Therefore the liquidation accounts cannot be re-opened in terms of section 408 of the Companies Act 61/1973 read with section 28(13) of the Act.

Unclaimed benefits must, in terms of section 410(2) of the Companies Act, be paid into the Guardian’s Fund and are not available for redistribution amongst other members.

This Office advises that the Pension Funds Adjudicator has no jurisdiction over a retirement fund once the appointment of the liquidator has been approved by this Office in terms of section 28(2) of the Act.”

7. I do not agree entirely with these arguments. While the fund is in the process of liquidation, after the appointment of a liquidator, there is still a fund; it exists until it is deregistered on the completion of the liquidation and thereupon deemed to be dissolved, as provided for in section 28(15). Therefore if a complaint is lodged in the course of the liquidation process, it is still a complaint as defined in the Act, in relation to a fund, as long as it cannot be considered either an “objection” or a “claim”. Where a member has an *objection* to the preliminary account, section 28(10) sets out an objection procedure against the liquidator with ultimate appeal to “the court” (defined in the Act as “a provincial or local division of the Supreme Court of South Africa”); this by inference excludes my jurisdiction. All *claims* against the fund must, according to section 28(14), be “proved to the satisfaction of the liquidator, subject to right of appeal to the court”. Not all complaints would
constitute claims in this sense; a complainant may for example seek relief that does not sound in money.

8. If a complaint which is neither an objection nor a claim within the ambit of section 28 is lodged after the appointment of a liquidator, I shall have jurisdiction, up until the point in time where the account is confirmed and the monies distributed. After this point, section 408 of the Companies Act, which applies mutatis mutandis to the dissolution of a fund, has application. It provides that after an account has been open to inspection and the lodging of objections, and no application to set aside the Master’s (read Registrar’s) decision has been made to the court within the prescribed time, the Master must confirm the account,

“and his confirmation shall have the effect of a final judgment, save as against such persons as may be permitted by the Court to re-open the account after such confirmation but before the liquidator commences with the distribution.”

9. While I therefore retain some residual jurisdiction in the event of a liquidation, the definition of a complaint in section 1 of the Act must be interpreted restrictively to exclude objections or claims falling within the ambit of section 28, and thereby to exclude my jurisdiction in relation thereto.

10. In this case the complaint clearly relates entirely to the liquidation of the fund and the discharge of its liabilities, on the voluntary dissolution of the fund. I therefore do not have jurisdiction to determine it. The complainant’s remedy lay in lodging an objection with the Registrar, and, if aggrieved with the Registrar’s decision, applying to the High Court.

11. The complaint is accordingly dismissed.

DATED at CAPE TOWN this 22nd day of NOVEMBER 2001.