Introduction

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

The complaint relates to the payment of a death benefit in terms of section 37C of the Pension Funds Act of 1956.

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 at my office on 26 February 1998. No hearing was held in this matter.
Accordingly, I have relied exclusively on documentary evidence, arguments put to me in writing and a report placed before me by my investigator, Naleen Jeram.

The complainant is Harriet-May Moir, an adult female, unemployed, of East London.

The first respondent is Reef Group Pension Plan, a pension fund duly registered under the Pension Funds Act of 1956 to carry on business as a pension fund.

The second respondent is Trade Forms (Pty) Ltd, a company duly incorporated with limited liability according to the company laws of the Republic of South Africa, having its registered office within South Africa and carrying on business as printers at Cape Town. The second respondent is represented by Mr Paul Rossouw, the financial manager.

Prior to December 1998 Commercial Union Life Assurance Company of South Africa Ltd, were the administrators and underwriters of the first respondent, who were then taken over by the third respondent, Metropolitan Life Limited. The third respondent was initially represented by Mr C Barratt, general manager. In about January 1999 Mr Barratt left employment and subsequently the third respondent has been represented by Mrs Claire Demetriou.

The fourth respondent is Mr Neil Anthony Moir, an adult male, of Johannesburg, Gauteng and represented by Mr Morris Stern of J L Martinson & Co, attorneys.

The rules of the first respondent are composed of an administration agreement between the principal employer (Lithosaver Systems Limited) of whom the second respondent is part of and the third respondent, who acts as the administrator of the first respondent and underwrites certain group benefits including a death benefit. In addition to this administration agreement there are general and special rules, with the latter primarily providing for the enhancement of additional benefits set out in the general rules. The administration agreement, general rules and special rules collectively form the rules of the
After the complainant lodged a written complaint at my office there was an exchange of lengthy correspondence (amounting to several lever arch files) and telephonic conversations between myself and Mr Barratt. At this point let me stress that there is an increasing tendency amongst representatives of parties to overburden our office with irrelevant documentation not directly relevant to the determination of the complaint. Thus, I again use this opportunity to appeal to representatives of all parties not to submit irrelevant documentation, which leads to a delay in the processing of complaints, and an increase in the backlog of cases.

The complaint

This complaint relates to the interpretation and application of the rules of the first respondent and alleges that a dispute of law has arisen in relation to a fund, between the fund or its administrators and the complainant.

The complainant was married to Alexander Forbes Moir on 5 May 1984 and divorced in September 1990. Despite the divorce order the parties continue to reside together in a common household and lived as husband and wife until the death of Mr Moir on 5 March 1997, at which point the said Mr Moir was employed by the second respondent and a member of the first respondent. The complainant argues that she was in fact dependant on Mr Moir and therefore qualified for any benefits due to Mr Moir in terms of the rules of the first respondent.

The late Mr Moir completed a nomination form (the validity of which is questioned by the complainant) prior to his death in which he nominated his brother Mr Neil Moir as his sole beneficiary.

The second and third respondent wish to exclude the complainant from the bulk of the
benefit and have consistently advanced the argument that I do not have jurisdiction to determine this matter. Despite numerous (telephonic and written) requests to Mr Barratt to obtain legal assistance and advice to fully set out the basis on which I do not have jurisdiction, he has failed to do this.

Hence, I have no option but to assume that Mr Barratt's responses in a telefacsimiles dated 15 May 1998 and 24 July 1998 constitute the second and third respondents' reply. The relevant parts of the argument are as follows:

The Group Policy is defined as the Lithosavers Systems Independent Group Life Assurance Scheme which provides for benefits on death prior to retirement. The scheme is totally independent of any Pension Fund organisation and is not registered in terms of the Pension Funds Act 24 of 1956. The registrar of Pension Funds has previously directed that his office would not register an independent Group Life policy as a Pension Fund Organisation. This can be confirmed by the Pension Funds Adjudicator by virtue of the powers available to him in terms of section 30J(2) of the Pension Fund Act.

1. Lithosavers as the participating employer provided for a death benefit as contained in the Pension Plan. This is the members share of the fund.

2. There is no relationship or connection at all between the Pension Plan (incorporating the aforementioned clauses) and the Lithosaver Systems Independent Group life Assurance Scheme. The Lithosaver Systems Independent Group Life Assurance Scheme is entirely independent of the Pension Plan and not linked in any way to the pension plan.

3. The aforesaid clauses apply only to the death benefit provided for in the Pension Umbrella Plan and do not relate in any way whatsoever to the Group Life Assurance Scheme, nor do they purport to do so.

We fax herewith a copy of a previous ruling from the Registrar of Pension Funds in terms whereof it has been decided:
a. Group Life Schemes should not be registered as a Pension Fund Organisation.
b. Group Life Schemes in no way comply with the basic characteristics of a Pension Fund, but closely resemble life insurance.

We trust that this ruling by the Registrar of Pension Funds clarifies the matter totally.

However, if you are insistent upon pursuing this matter further, and are of the opinion that you do indeed have jurisdiction to adjudicate on any dispute relating to the Lithosaver Systems Independent Group Life Assurance Scheme then it will be necessary for us to involve the Life Assurance association, the Financial Services Board and the Commissioner of inland Revenue.

The circular certainly demonstrates convincingly that the Independent Group Life Scheme should not be dealt with in terms of the Pension Funds act.

A further distinction is that the Rules of the Pension Fund are registered and contained in our untaxed portfolio, whereas the Independent Group Life Scheme Rules are unregistered and are a portion of our taxed portfolio.

It is also submitted that no pension benefits whatsoever are provided for in Lithosaver Systems Independent Group Life Assurance Scheme.

The Pension Fund Circular no. 6 referred to above, reads as follows:

Group Life Schemes:

In Circular no. 1161 dated 15th May 1961, issued by the Life Offices Association it was stated that this office considered it correct that certain group life schemes had to be registered under the Pension Funds Act, 1956.

In the light of experience gained since the coming into operation of the Pension Funds Act this office
has had reason to reconsider the question as to whether it is correct that Group Life Schemes be registered as pension fund organisations as defined in the Act. A basic feature of any pension or provident fund is that the benefit payable bears some relation to the length of membership (or service) and to the salary of the member. For example, the benefit receivable from a pension fund by a member of, say, 10 years standing at an average salary of, say R1,000 per annum will not be comparable with the benefit due to a member of, say, 40 years standing and who had for the last seven years an average salary of, say R4,000 per annum. Length of service and salary during membership or at retirement are the outstanding features of a pension or provident fund.

On the basic principle of life insurance, on the other hand, is that a benefit is payable on the occurrence of the death of a particular person irrespective of how long the premiums were paid. For example, if a person were insured for, say, R10,000 this amount would be paid on death whether the insured died within one month or thirty years from the date the insurance was effected. In this case neither the length of the coverage nor the salary or social standing of the deceased, has any bearing on the amount payable on death.

This office tested the features of group life schemes generally against the basic principles expounded above and found that normally the benefits payable bear no relation to the length of service and in few cases only is the salary payable. In view thereof this office has come to the conclusion that group life schemes in no way comply with the basic characteristics of a pension fund. On the other hand, group life schemes closely resemble life insurance. This office can in fact find very little reason to assume that group life schemes are not ordinary life insurance.

It has been decided, therefore, that all group life schemes (except those where group life cover is given as part of the benefits under a pension fund) were erroneously registered under the Pension Funds Act and that the registration should be cancelled in terms of section 27(1)(b) of that Act. You are therefore, requested to return to this office for cancellation as soon as possible all registration certificates issued to group life schemes under written by your company.

The Life Offices Association was consulted in the matter and has no objection to the foregoing.

The second respondent represented by Mr Paul Rossouw, who is also one of the trustees of the first respondent has set out the benefits due, which are as follows:

**Value of the benefits before tax:**
Pension  "R25,356.63
Independent Life Cover  R122,400.00

Rules and regulations of the independent life cover

The Independent Life Cover is not registered or approved as a fund. I have asked Mr Chris Barratt of Commercial Union to reply to your regarding this matter.

Distribution of benefits

Pension fund money  To the Insolvent Estate of the Late AF Moir
[Letter from Macleod's attached]

Independent life cover benefit  As per the nominee form signed & dated by the Late A F Moir [copy attached]

Although not expressly stating so, the second respondent is assuming that the life cover benefit does not form part of the second respondent and therefore I have no jurisdiction over this distribution. Once again, insufficient argument was advanced to justify this point of view. As mentioned, I repeatedly requested Mr Barratt to obtain advice from the third respondent's in-house legal advisors to assist him formulate the argument with specific reference to the relevant rules and provisions of the Act. Unfortunately, I was unable to secure his co-operation and he persisted somewhat defensively in his initial view.

Issue of jurisdiction

The payment of death benefits is regulated by Section 37C of the Pension Funds Act of 1956, which reads as follows:

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member...
Hence, the issue in law is whether such benefit is payable by a registered fund, namely the first respondent.

“Fund” means a pension fund organisation.

“Pension fund organisation” means -

(a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching their retirement dates, or for the dependants of such members or former members upon the death of such members or former members; or

(b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons, and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) or (b) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or to collect contributions from or on behalf of, members.

The definition of pension fund organisation clearly allows for the provision of benefits upon the death of a member.

The second and third respondents primary argument is that the life cover benefit is separate from the second respondent and governed by its own set of rules, not registrable under the Pension Funds Act and it exhibits characteristics of a domestic policy as defined in section 1 of the Insurance Act of 1943.

However, on a closer inspection of the rules of the first respondent, rule 15 of the general
rules is the provision granting the entitlement to a death benefit, which reads:

If a Member dies in Service before Normal Retirement Date then subject to the provisions of General Rule 26 and the terms and conditions of General Rules 16 and 17 the Life Assurance Benefit is payable in accordance with the provisions of General Rule 23.

Unfortunately, the copy of the rules provided by Mr Barratt (after several requests) does not contain a rule 23 or rule 26. Nor have any of the parties demonstrated to me in terms of which specific rule the benefits were determined and computed.

Rule 15, however, makes it clear that the complainant's right to a death benefit is payable in terms of the rules of the fund. Moreover, the administration agreement makes several references to how death benefit funds are to be invested and administered. The funding of the life cover benefit and precise computation thereof is set out in the assurance agreement between the first and third respondent. This agreement certainly exhibits characteristics of an insurance policy. Be that as it may, it does not alter the legal position that the right to the benefit is derived from and is payable in terms of the rules of the first respondent.

Further, the complainant received a members' explanation book from the first respondent which inter alia sets out benefits due as follows:

DEATH BENEFITS

Death before Normal Retirement Date.

If you die in our Service before Normal Retirement Date your dependants or nominated beneficiaries will receive:-

(i) a Life Assurance Benefit equal to twice your annual salary
(ii) your share of the Plan.

Payment of Death Benefits
When you die all benefits due must be paid to your dependants or nominated beneficiaries. (A dependant includes your spouse and minor children)

This booklet further support a finding that a death benefit arises from the rules of the first respondent and discloses an intention to distribute the benefit in accordance with section 37C. The benefit is described as a “death benefit” and the language used reflects the terminology of the statute.

Pension Fund Circular no. 6, referred to by Mr Barratt is not in itself directly relevant to the facts at hand. This Circular deals with the erroneous registration of group life schemes under the Pension Funds Act. However, the second last paragraph, which is ignored by Mr Barratt, is of such relevance that I quote it in full again.

It has been decided, therefore, that all group life schemes (except those where group life cover is given as part of the benefits under a pension fund) were erroneously registered under the Pension Funds Act (emphasis supplied).

The exception created by the Registrar of Pension Funds is directly applicable to the facts at hand as here we are dealing with a pension fund where life cover is given as part of the benefits under the fund upon the death of a member. Mr Barratt unsurprisingly fails to deal with this exception, which is probably the only aspect of the Circular directly relevant to the matter at hand. In terms of this exception, where a pension fund rule provides for group life cover, such a scheme shall be an integral part of a registered pension fund organisation, and the death benefits derived therefrom must be distributed in accordance with the Act.

In the light of the above, I find that the group life benefit is payable by the fund in terms of the rules and consequently section 37C is applicable to the distribution of the benefit. Accordingly, I have jurisdiction to determine this matter.

The distribution of the benefit

Mr Paul Rossouw, the trustee of the first respondent, has consistently maintained the position that there are two benefits, the death benefit of which should be distributed to the nominee, Mr Neil Moir, with a pension benefit being awarded to the deceased’s estate and not the complainant. On 30 July 1999 my investigator requested Mr Rossouw to address me on distribution of the benefits on the assumption that the complainant
was a dependant and Mr Neil Moir was a nominee. In a telefacsimile dated 2 August 1998 Mr Rossouw responds as follows:

<table>
<thead>
<tr>
<th>Pension Fund Payout</th>
<th>to Harriet Moir</th>
<th>100% (as per estate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death Benefit</td>
<td>to Mr Neil Moir</td>
<td>100% (as per nominee form)</td>
</tr>
</tbody>
</table>

Once again, no argument was advanced as to why the dependant should be totally excluded from sharing in the section 37C distribution.

The complainant argues that she was the dependant of the late Mr Moir and advanced the following arguments to support her contention.

(1) The complainant and the deceased met in January 1981 and were married in East London on 5 May 1984 whereafter the parties moved to Johannesburg, and resided together as husband and wife until their divorce in September 1990.

(2) After the final divorce order was handed down the complainant moved from East London to Cape Town. However, during the following 9 months she frequently communicated with the deceased, whereafter the deceased joined the complainant in Cape Town and commenced living together as man and wife until the death of Mr Moir. In short, with the exception of the nine month separation, they lived together as man and wife for a period of 16 years.

(3) The complainant was dependant on the deceased for financial assistance. Both their salaries were paid into a joint banking account with the deceased's salary being R5,100.00 and the complainant's being R2,900.00 per month immediately prior to the deceased's death.

(4) The complainant after the divorce remained on the deceased's medical aid.

(5) The complainant avers that the major reason for the divorce was the deceased's failure to treat his chronic depression and none of the deceased's family members were prepared to assist him with this problem, both before and after the divorce.
(6) The deceased elected to commit suicide in the common household of the parties.

(7) In terms of the parties joint last will, the complainant is the sole heiress.

(8) As regards the nomination form nominating Mr Neil Moir as the sole beneficiary, the complainant avers that it is invalid on two grounds, namely: firstly, she questions the authenticity of the nomination form and secondly the deceased's capability of making a rational decision at the time of the signing of the nomination form.

Because the deceased nominated his brother, Mr Neil Moir, as his sole beneficiary, I invited him to forward written submissions on the distribution of the benefits. He in turn instructed Mr M Stern of JL Martinson & Co, who argues that the deceased completed a nomination form in which he nominated Mr Neil Moir as a sole beneficiary and therefore he is solely entitled to the life cover benefit to the exclusion of any other beneficiary. He does confirm that the deceased and the complainant were living together as husband and wife after their divorce. However, he adds that the parties were experiencing marital problems, and seems to suggest that this in some way detracts from her claim to dependancy.

Analysis of evidence and argument

As stated, the distribution of any death benefit is governed by section 37C, which reads as follows:

**Section 37C Disposition of pension benefits upon death of member**

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

(a) If the fund within twelve months of the death of the member becomes aware
of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants;

(b) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee: Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.

(bA) If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees; and

(c) If the fund does not become aware of or cannot trace any dependant of the
member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

Dependant is defined as follows in the Act:

(b) a person in respect of whom the member is legally liable for maintenance;

(c) a person in respect of whom the member is not legally liable for maintenance, if such person -

(i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion;

(iii) is a child of the member, including a posthumous child, an adopted child and an illegitimate child;

(c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died.

The first enquiry is whether the complainant is a dependant as defined in the Act. As I have held before (see van der Merwe & others v The Southern Life Association Ltd PFA/WE/21/98) in order for the complainant to fall within the category (b)(i) of the definition of dependant, it will be sufficient if the parties shared a common household and lived together as husband and wife even though they were not legally married. In this matter there is uncontested evidence that the parties lived as husband and wife in a common household and were emotionally and financially dependant on each other for
almost six years after they were divorced. Thus, I am satisfied that the complainant qualified as a dependant.

The second enquiry is whether Mr Neil Moir is a nominee. The complainant alleges that the nomination form is invalid then makes two vague allegations with regards to the authenticity of the document and the mental capacity of the deceased at the time of completing the nomination form. However, she produces no evidence to substantiate these allegations. In the absence of this evidence I am inclined to accept the nomination form as valid and effective.

The third enquiry is whether the trustees of the first respondent’s proposed distribution is an equitable distribution as required by section 37C. Mr Neil Moir’s argument that he is entitled to the entire benefit is based on the false assumption that the wishes of the deceased in a nomination form is the sole criterion in determining the payment of the benefit. Mr Rossouw’s proposed distribution is also labouring under this mistaken premise. In fact, Mr Rossouw appears to be blinded by this criterion and he refuses to take any other factors into account. The whole purpose of section 37C is to restrict freedom of testation in respect of pension benefits and ensure that no dependants are left without support. Any distribution must take place in accordance with section 37C and the board of any fund has to ensure that there is an equitable distribution.

The proposed distribution in this matter shows that the trustees have fettered their discretion by basing their distribution on the nomination form alone. Even after my investigator requested Mr Rossouw to reconsider the distribution on the assumption that there was a dependant and a nominee he stood by his earlier decision according no recognition to the needs of the dependant. Accordingly, I find the proposed distribution decision of the trustees to award Neil Moir 100% of a death benefit unreasonable and inequitable and thus, it should be set aside.

As a starting point, our courts are reluctant to substitute their own decision for another administrative authority, where that administrative action is found to be unreasonable or
ultra vires. The norm is to refer the decision back to the administrative authority. However, exceptional or unique circumstances permit a judicial officer to substitute his or her decision for the administrative body. Baxter, Administrative Law (682 - 684) delineates four such circumstances, namely; where:

1. further delay would cause unjustifiable prejudice to the applicant;
2. the tribunal or functionary has exhibited bias or incompetence to such a degree that it would be unfair to require the applicant to submit to the same jurisdiction again;
3. the court is in as good a position to make the decision itself; and
4. the end result is in any event a foregone conclusion and it would merely be a waste of time to order the tribunal or functionary to reconsider the matter.

On the facts of this matter, Mr Rossouw’s failure to consider all relevant factors is of concern to me, especially in the light of his evident incapacity to consider a fairer distribution and then make further submissions on the distribution of the benefit. In his subsequent response he again failed to take into account the needs of the dependant. This indicates a measure of bias towards the nominee. Further, this matter has dragged on for a considerable period of time causing unjustifiable prejudice. Sufficient evidence in respect of the status of the parties has been placed before me to make a decision in respect of the equitable distribution of the benefits. Accordingly, I propose to substitute my decision for that of the trustees of the first respondent.

At this point, it is once again useful to illuminate the factors which should be taken into account when distributing a death benefit:

(i) the age of the parties;
(ii) the relationship with the deceased;
(iii) the extent of dependancy;
(iv) financial affair of the beneficiaries;
(v) future earning potential and prospects of beneficiaries; and
(vi) the wishes of the deceased expressed in the nomination form and/or the last will.
As already stated, the complainant in addition to residing with the deceased as husband and wife (for a period of almost seven years after the divorce) immediately prior to the death of the deceased was factually dependant on the deceased. The complainant also during and after the marriage provided emotional support to the deceased, especially at the times when he was receiving treatment for chronic depression. On the other hand Mr Neil Moir's relationship with the deceased appears to have been sporadic. From his written submissions it appears that he did not see the deceased on a regular basis and only saw him on certain isolated occasions. At the time of the deceased's death Mr Moir was in Johannesburg.

The wishes of the deceased is an important but not a decisive factor. In terms of the deceased and complainant's joint last will dated 30 October 1988, they appointed the survivor of them as the sole heir/ess, thus, the complainant is the sole heiress of the residue of the estate. Although the joint will is dated 11 years ago the fact that the parties did not alter or revoke the will, gives some indication of their relationship. The nomination form completed by the deceased one week prior to him committing suicide clearly nominates his brother as a sole beneficiary of his pension benefit. This wish of the deceased will have to be taken into account but not in isolation and to the exclusion of the aforesaid factors.

The complainant is currently 37 years of age and unemployed. After the death of the deceased she could no longer afford to remain in the common household and was forced to move out. She has currently moved back to East London and is now residing with her sister, who is also maintaining her. She is not a member of any pension fund and thus there is no provision for her retirement. Further the complainant's attorneys have pointed out to me that she is still in a state of shock as a result of the suicide of her husband and the manner in which the death occurred.

The primary purpose of section 37C is to ensure that the dependants of the deceased are provided for even if the deceased member wishes his benefits to be distributed otherwise. In the light of the dependant's current financial status and the fact that she lived as husband and wife with the deceased immediately prior to his death and in the light of Neil Moir's limited contact with the deceased during his life time, I am of the view that the entire benefit (R25 356.63 + R122 400.00)
should be distributed to the complainant. Mrs Claire Demetriou of Metropolitan Life Employee Benefits has indicated that the first and third respondent have agreed to pay interest on the aforesaid amounts, being R3 718.50 on the pension fund benefit and R17 949.72 on the death benefit. The total amount payable is R169 424.85.

A final issue which needs to be addressed is whether there can be a payment of any portion of the benefit into the insolvent estate of the deceased. Mr Rossouw suggested that the pension value of R25,356.63 should be paid into the insolvent estate of the deceased. However, section 37C expressly states that any benefit arising from the fund as a result of the death of a member shall as a general rule not form any part of such deceased member's estate. Payment into an insolvent deceased estate is permissible in terms of section 37C (1)(b) and (c) under certain prescribed circumstances where there are no dependants. The complainant is a dependant and hence no amount of the benefit may be paid into the estate.

**Relief**

Accordingly, I make the following order:

1. The complainant is declared to be a dependant of the deceased and entitled to share in the benefits payable by the first and third respondent by virtue of the death of the late Mr Moir.

2. The decision of the first respondent to distribute the benefit payable in terms of section 37C of the Pension Funds Act of 1956 to Mr Neil Moir and the deceased's insolvent estate is hereby set aside.

3. The first respondent is ordered to pay the amount of R169 424.85 to the complainant within 6 weeks of the date of this determination; interest thereon to be payable in terms of section 2 of the Prescribed Rate of Interest Act from 6 weeks after the date of this determination until payment.
Dated at CAPE TOWN this 10\textsuperscript{th} day of August 1999.

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John Murphy  
Pension Funds Adjudicator