

## PENSION FUNDS ADJUDICATOR

## Is placing of a major's benefit in trust in accordance with the law?

*Moralo v Holcim South Africa Provident Fund, Holcim South Africa (Pty) Ltd & Alexander Forbes Trust.*

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*Upon the death of the member, a lump sum benefit of R248 944. 63 became available for distribution.*

The fund paid R164 998.12 to Alexander Forbes Trust. This represented R82 499.06 payable to the widow and the balance payable to the 3 minor children of the deceased member.

The trust company was responsible for monthly payments to the beneficiaries. The complainant was unhappy with her benefit being placed with a trust company and lodged a complaint with the adjudicator's office.

The fund argued that the reason it placed the widow's benefit in trust was that she was unemployed, had another 25 years to retirement age and cared for a minor child of 5 years.

The adjudicator firstly held that the payment of the minor's benefit in trust was not in dispute on the facts of this case. However, the issue for determination was whether the placing of a major's benefit in trust was in accordance with the law.

In terms of the Pension Funds Act, the fund had 3 options, namely, direct payment to the beneficiary or payment by the fund on an instalment basis or payment to a trust company. After examining the relevant sections, the adjudicator held that direct payment to the beneficiary is the primary option and there must be good reason in law and fact (exceptional or compelling circumstances) to depart from this principle.

The adjudicator rejected the reasons provided by the fund and stated that there is no evidence that the complainant is labouring under a legal disability such as prodigality, insolvency or mental disability.

There is further no evidence that a curator has been appointed to the complainant or that she is incapable of managing her own affairs. Nor is there any other evidence justifying the deprivation of the complainant's right to manage and control the lump sum payment.

Thus, the adjudicator concluded that the trustees of the fund failed to properly exercise their discretion in deciding to deprive the complainant of her right to administer her own benefit.

The fund was ordered to pay the remaining balance in the trust company to the complainant.

