

*Section 37C*

# **Section 37C – A Case List Preview**

**1998 – 2003**

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## **Dependant – Definition**

### **Section 1:**

*Dependant, in relation to a member, means –*

*(a) a person in respect of whom the member is legally liable for maintenance.*

### **Cases:**

1. ***Dijane v Tiger Oats Provident Fund*** [2003] 6 BPLR 4773 (PFA)
2. ***Dyas v CTS Provident Fund & Another*** [2003] 3 BPLR 4448 (PFA)
3. ***Lombard v Central Retirement Annuity Fund*** [2003] 3 BPLR 4460 (PFA)
4. ***Mkaba v SA Breweries Staff Provident Fund*** [2002] 3 BPLR 3209 (PFA)
5. ***Zikhali & Another v Metal Industries Provident Fund & Another*** (2) [2002] 5 BPLR 3494 (PFA)
6. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** [2002] 7 BPLR 2330 (PFA)
7. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** (2) [2002] 5 BPLR 3460 (PFA)
8. ***Ntoyi v Transportation Motor Spares Group Pension Fund & Another*** [2002] 8 BPLR 3797 (PFA)
9. ***Mokele v SAMWU National Provident Fund*** [2002] 12 BPLR 4175 (PFA)
10. ***Fourie v Free State Municipal Pension Fund*** [2002] 12 BPLR 4131 (PFA)
11. ***Matene v Noordberg Group Life-Assurance Scheme & Another*** (2) [2001] 2 BPLR 4788 (PFA)
12. ***Wasserman v Central Retirement Annuity Fund*** (1) [2001] 6 BPLR 2160 (PFA)
13. ***Bruce v Lifestyle Retirement Annuity Fund*** [2001] 7 BPLR 2193 (PFA)
14. ***Cala Dairies cc v Orion Money Purchase Provident Fund & Another*** (2) [2001] 11 BPLR 2683
15. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** (2) [2000] 11 BPLR 1284 (PFA)
16. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** (2) [2000] 11 BPLR 1284 (PFA)
17. ***Khutswane v Malbak Group Pension Fund & Another*** [2000] 12 BPLR 1354 (PFA)

*Dependant, in relation to a member, means –*

- (a) ...
- (b) *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;...*

Cases:

1. ***Matseke & another v NTI Provident Fund & Others*** [2003] 6 BPLR 4788 (PFA)
2. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** [2002] 7 BPLR 2330 (PFA)
3. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** (2) [2002] 5 BPLR 3460
4. ***Mokele v SAMWU National Provident Fund*** [2002] 12 BPLR 4175 (PFA)
5. ***Mothudi v Old Mutual Staff Retirement Fund*** [2002] 12 BPLR 4180 (PFA)
6. ***Bakumeni v Old Mutual Staff Retirement Fund*** [2001] 2 BPLR 1573 (PFA)
7. ***Williams & Others v FFE Minerals South Africa Pension Fund & Another*** (1) [2001] 2 BPLR 1678 (PFA)
8. ***Williams & Others v FFE Minerals South Africa Pension Fund & Another*** (2) [2001] 2 BPLR 1685 (PFA)
9. ***Govender v Alpha Group Employees Provident Fund & Another*** [2001] 4 BPLR 1843 (PFA)
10. ***Govender v Alpha Group Employees Provident Fund & Another*** [2001] 8 BPLR 2385 (PFA)
11. ***Chittenden v Estcourt Butchery (Pty) Ltd Provident Fund & Another*** [2001] 5 BPLR 2001 (PFA)
12. ***Ditshabe v Sanlam Marketers Retirement Fund & Another*** (1) [2001] 10 BPLR 2574 (PFA)
13. ***Ditshabe v Sanlam Marketers Retirement Fund & Another*** (2) [2001] 10 BPLR 2579 (PFA)
14. ***TWC & Others v Rentokil Pension Fund & Another*** [2000] 2 BPLR 216 (PFA)
15. ***Van der Merwe & Others v Southern Life Association Ltd & Another*** [2000] 3 BPLR 321 (PFA)
16. ***Musgrave v Unisa Retirement Fund*** [2000] 4 BPLR 415 (PFA)

*Dependant, in relation to a member, means – (Cont.)*

17. ***Moir v Reef Group Pension Plan & Others*** [2000] 6 BPLR 629 (PFA)

18. ***Martin v Beka Provident Fund*** [2000] 2 BPLR 196 (PFA)

*Dependant, in relation to a member, means –*

*(a) ...*

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

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

*(c) ...*

Cases:

1. ***Moshidi v Kimberley-Clark Provident Fund & Another*** [2003] 7 BPLR 4947 (PFA)
2. ***Teffo v United Services Technologies Provident Fund & Another*** (1) [2001] 4 BPLR 1917 (PFA)
3. ***Mwelase v Randcoal Provident Fund*** [2001] 10 BPLR 2612 (PFA)

*Dependant, in relation to a member means –*

- (a) ...
- (b) *a person in respect of whom the member is not legally liable for maintenance, if such person*
  - (i) ...
  - (ii) ...
  - (iii) *is a child of the member, including a posthumous child, an adopted child and an illegitimate child;*

Cases:

1. ***Van den Berg v Durban Pension Fund*** [2003] 3 BPLR 4518 (PFA)
2. ***Hattingh & Others v Hattingh & Others*** [2003] 4 BPLR 4539 (PFA)
3. ***Bruce v Lifestyle Retirement Annuity Fund*** [2001] 7 BPLR 2193 (PFA)

*Dependant, in relation to a member, means –*

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

Cases:

1. ***Wellens v Unsgaard Pension Fund*** [2002] 12 BPLR 4214 (PFA)
2. ***Wasserman v Central Retirement Annuity Fund*** (1) [2001] 6 BPLR 2160 (PFA)

*Nominees and principles applicable to the Nomination form.*

Cases:

1. ***Zulu v Illovo Sugar Provident Fund*** [2002] 2 BPLR 3129 (PFA)
2. ***Kruger v Central Retirement Annuity Fund*** [2002] 7 BPLR 3643 (PFA)
3. ***Mashazi v African Products Retirement Benefit Provident Fund*** [2002] 8 BPLR 2334 (W)
4. ***Kaplan & Another v Professional & Executive Retirement Fund & Others*** [2001] 10 BPLR 2537 (A)
5. ***Kaplan & Another NNO v Professional and Executive Retirement Fund & Others; Kaplan & Another NNO v VIP Retirement Annuity Fund & Others*** [2001] 10 BPLR 2541 (W)
6. ***Muir v Mutual & Federal Pension Fund*** [2002] 9 BPLR 3864 (PFA)
7. ***Bosch v White River Toyota Provident Fund*** [2001] 3 BPLR 1702 (PFA)
8. ***Martin v Beka Provident Fund*** [2000] 2 BPLR 196 (PFA)
9. ***Dobie NO v National Technikon Retirement Pension Fund*** [1999] 9 BPLR 29 (PFA)



Section 37C(1)

*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)(6)(i) and subject to the provisions of section 37A(3) and 37D, not form part of the assets in the estate of such a member,...*

Cases:

1. ***Kipling v Unilever SA Pension Fund & Another*** (1) [2001] 8 BPLR 2368 (PFA)
2. ***Kipling v Unilever SA Pension Fund & Another*** (2) [2001] 8 BPLR 2377 (PFA)
3. ***Kaplan & Another v Professional & Executive Retirement Fund & Others*** [2001] 10 BPLR 2537 (A)
4. ***Kaplan & Another NNO v Professional and Executive Retirement Fund & Others; Kaplan & Another NNO v VIP Retirement Annuity Fund & Others*** [2001] 10 BPLR 2541 (W)
5. ***Damgaard v EAC Provident Fund*** [2001] 10 BPLR 2569 (PFA)
6. ***Ellis NO v Lifestyle Retirement Annuity Fund*** [2001] 5 BPLR 2021 (PFA)
7. ***Sithole v ICS Provident Fund & Another*** [2000] 4 BPLR 430 (PFA)

Section 37C(1)(a)

(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*

Cases:

1. ***Van Schalkwyk v Mine Employees Pension Fund & Another*** [2003] 8 BPLR 1538 (PFA)
2. ***Matlakane v Royal Paraffin Provident Fund*** [2003] 6 BPLR 5296 (PFA)
3. ***Hattingh & Others v Hattingh & Others*** [2003] 4 BPLR 4539 (PFA)
4. ***Mofabetha v Sapekoe Provident Fund & Another*** [2003] 4 BPLR 4568 (PFA)
5. ***Makoena v Metal Industries Provident Fund*** [2003] 3 BPLR 4481 (PFA)
6. ***Ruiters v Telkom Retirement Fund*** [2003] 3 BPLR 4501 (PFA)
7. ***Van den Berg v Durban Pension Fund*** [2003] 3 BPLR 4518 (PFA)
8. ***Motsoeneng v AECI Pension Fund & Another*** [2003] 4 BPLR 4260 (PFA)
9. ***Van Zelser v Sanlam Marketers Retirement Fund & Others*** [2003] 2 BPLR 4420 (PFA)
10. ***Magwaza v BB Cereals Provident Fund*** [2002] 1 BPLR 2978 (PFA)
11. ***Schleicher & Another v South African Retirement Annuity Fund & Others*** [2002] 7 BPLR 3677 (PFA)
12. ***Segal & Others v Lifestyle Retirement Annuity Fund*** [2001] 1 BPLR 1519 (PFA)
13. ***Williams & Others v FFE Minerals South Africa Pension Fund & Another*** (1) [2001] 2 BPLR 1678 (PFA)
14. ***Williams & Others v FFE Minerals South Africa Pension Fund & Another*** (2) [2001] 2 BPLR 1685 (PFA)
15. ***Bosch v White River Toyota Provident Fund*** [2001] 3 BPLR 1702 (PFA)
16. ***Brummelkamp v Babcock Africa (1997) Pension Fund & Another*** [2001] 4 BPLR 5198 (PFA)
17. ***Dickson v ABSA Group Pension Fund*** [2001] 6 BPLR 2062 (PFA)
18. ***Seymore NO v Colgate-Palmolive Pension Fund & Another*** [2001] 7 BPLR 2256 (PFA)

Section 37C(1)(a) (Cont.)

1. ***Kaplan & Another v Professional & Executive Retirement Fund & Others*** [2001] 10 BPLR 2537 (A)
2. ***Kaplan & Another NNO v Professional and Executive Retirement Fund and Others; Kaplan & Another NNO v VIP Retirement Annuity Fund & Others*** [2001] 10 BPLR 2541 (W)
3. ***Ditshabe v Sanlam Marketers Retirement Fund*** (1) [2001] 10 BPLR 2574 (PFA)
4. ***Ditshabe v Sanlam Marketers Retirement Fund & Another*** (2) [2001] 10 BPLR 2579 (PFA)
5. ***Robinson v Central Retirement Annuity Fund*** (1) [2001] 10 BPLR 2623 (PFA)
6. ***Robinson v Central Retirement Annuity Fund*** (2) [2001] 10 BPLR 2628 (PFA)
7. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** [2001] 7 BPLR 2230 (PFA)
8. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** (2) [2002] 5 BPLR 3460 (PFA)
9. ***Sithole v ICS Provident Fund & Another*** [2000] 4 BPLR 430 (PFA)
10. ***Van Vuuren v Central Retirement Annuity Fund & Another*** [2000] 6 BPLR 661 (PFA)
11. ***Nsele v Human Rights Commission Staff Provident Fund*** [2000] 7 BPLR 756 (PFA)
12. ***Niewenhuizen v SAB Staff Provident Fund & Another*** [2000] 12 BPLR 1413 (PFA)
13. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** [2000] 3 BPLR 287 (PFA)
14. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** (2) [2000] 11 BPLR 1284 (PFA)
15. ***Khutswane v Malbak Group Pension Fund & Another*** [2000] 12 BPLR 1354 (PFA)

Section 37(1)(b)

- (6) *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.*

Cases:

1. ***Muir v Mutual & Federal Pension Fund*** [2002] 9 BPLR 3864 (PFA)
2. ***Dobie NO v National Technikon Retirement Pension Fund*** [1999] 9 BPLR 29 (PFA)
3. ***Krishnasamy & Other v ABI Provident Fund*** (as yet unreported)

Section 37C(1)(bA)

(6A) *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.*

Cases:

1. ***Karam v Amrel Provident Fund*** [2003] 9 BPLR 5098 (PFA)
2. ***Phashe & Others v Metro Group Retirement Fund*** [2003] 9 BPLR 5123 (PFA)
3. ***Schoeman v Rentemeester Pensioenfonds*** [2003] 9 BPLR 5145 (PFA)
4. ***Tladi v Pfizer Provident Fund & Another*** [2003] 7 BPLR 4969 (PFA)
5. ***Bukashe & Another v Umthunzi Provident Fund*** [2003] 5 BPLR 4635 (PFA)
6. ***Kruger v Central Retirement Annuity Fund*** [2002] 7 BPLR 3643 (PFA)
7. ***Mashazi v African Products Retirement Benefit Provident Fund*** [2002] 8 BPLR 3703 (W)
8. ***Morgan v SA Druggists Provident Fund & Another*** (1) [2001] 4 BPLR 1886 (PFA)
9. ***Kipling v Unilever SA Pension Fund*** (1) [2001] 8 BPLR 2368 (PFA)
10. ***Kipling v Unilever SA Pension Fund*** (2) [2001] 8 BPLR 2377 (PFA)
11. ***Diergaardt v KWV-Voorsorgfonds*** [2001] 11 BPLR 2703 (PFA)
12. ***Musgrave v Unisa Retirement Fund*** [2000] 4 BPLR 415 (PFA)
13. ***Moir v Reef Group Pension Plan & Others*** [2000] 6 BPLR 629 (PFA)

Section 37C(1)(c)

- (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 Guardians Fund.*

Cases:

1. ***Muir v Mutual & Federal Pension Fund*** [2002] 9 BPLR 3864 (PFA)
2. ***Jacobs NO v Central Retirement Annuity Fund & Another*** [2001] 1 BPLR 1488 (PFA)
3. ***Wasserman v Central Retirement Annuity Fund*** (1) [2001] 6 BPLR 2160 (PFA)
4. ***Mahlambi v Chubb Group Pension Fund*** [2001] 5 BPLR 2034 (PFA)
5. ***Martin v Beka Provident Fund*** [2000] 2 BPLR 196 (PFA)
6. ***Dobie NO v National Technikon Retirement Pension Fund*** [1999] 9 BPLR 29 (PFA)

7. Sections 37C(2), (3) & (4)

- (2) *For the purpose of this section, a payment by a registered fund to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee.*
- (3) *Any benefit dealt with in terms of this section, payable to a minor dependant or minor nominee, may be paid in more than one payment in such amounts as the board may from time to time consider appropriate and in the best interests of such dependant or nominee: Provided that interest at a reasonable rate, having regard to the investment return earned by the fund, shall be added to the outstanding balance at such times as the board may determine: Provided further that any balance owing to such a dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.*
- (4)(a) *Any benefit dealt with in terms of this section, payable to a major dependant or major nominee, may be paid in more than one payment if the dependant or nominee has consented thereto in writing: Provided that*
- (i) *the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and*
  - (ii) *the agreement may be cancelled by either party on written notice not exceeding 90 days.*
- (b) *If the agreement contemplated in paragraph (a) is cancelled the balance of the benefit shall be paid to the dependant or nominee in full.*

### Cases:

1. ***Robinson v Boehringer-Ingelheim Pension Scheme & Another*** [2003] 10 BPLR 5234 (PFA)
2. ***Dhlamini v Smith & Another*** [2003] 7 BPLR 4894 (PFA)
3. ***Mokgoko v Diepmeadow Pension Fund*** [2003] 4 BPLR 4575 (PFA)
4. ***Mangxiki v Mineworkers Provident Fund & Another*** [2002] 5 BPLR 3450 (PFA)
5. ***Malanga v Group Five Multi Benefit Retirement Fund*** [2001] 10 BPLR 2607 (PFA)

### Interest on the late payment of benefits

#### Cases:

1. ***Sebela v Senwes Ltd Pension Fund*** [2003] 6 BPLR 4809 (PFA)
2. ***Khutswane v Malbak Group Pension Fund & Another*** [2002] 11 BPLR 5271 (PFA)
3. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** [2001] 7 BPLR 2230 (PFA)
4. ***Mthiyane v Fedsure Life Assurance Ltd & Others*** (2) [2002] 5 BPLR 3460 (PFA)
5. ***Boddy v Morganite South Africa (Pty) Ltd Pension Plan*** [2001] 1 BPLR 1459 (PFA)
6. ***Jacobs NO v Central Retirement Annuity Fund & Another*** [2001] 1 BPLR 1488 (PFA)
7. ***Dobie NO v National Technikon Retirement Pension Fund*** [1999] 9 BPLR 29 (PFA)

### Computation/Calculation of death benefits

#### Cases:

1. ***Bukashe & Another v Umthunzi Provident Fund*** [2003] 5 BPLR 4635 (PFA)
2. ***Ankers v Amalgam Pension Fund & Others*** [2002] 2 BPLR 3046 (PFA)
3. ***Mokoatle v Commercial Industries National Provident Fund & Others*** (1) [2002] 1 BPLR 2989 (PFA)
4. ***Gravett v Allianz Pension Fund*** [2002] 11 BPLR 4033 (PFA)
5. ***Lerena v Bandag Provident Fund*** [2002] 9 BPLR 3858 (PFA)



## Computation/Calculation of death benefits –Cases (Cont.)

6. ***Mangxiki v Mineworkers Provident Fund & Another*** [2002] 5 BPLR 3450 (PFA)
7. ***Mlungisi v Anglo American Property Services Provident Fund*** (1) [2001] 4 BPLR 1878 (PFA)
8. ***Ellis NO v Lifestyle Retirement Annuity Fund*** [2001] 5 BPLR 2021 (PFA)
9. ***Nxumalo v Central Provident Fund & Another*** (1) [2001] 6 BPLR 2119 (PFA)
10. ***Nxumalo v Central Provident Fund & Another*** (2) [2001] 8 BPLR 2383 (PFA)
11. ***Damgaard v EAC Provident Fund*** [2001] 10 BPLR 2569 (PFA)
12. ***Wolf & Others v Cabris Holdings Pension Fund and Group Life Fund & Another*** [2001] 1 BPLR 1557 (PFA)

## Definition of eligible “spouse/widow” as contained in rules

### Cases:

1. ***Satchwell v President of the Republic of SA & Another*** [2002] 1 BPLR 2901 (T)
2. ***Strassburg v Telkom Retirement Fund & Another*** [2002] 2 BPLR 3117 (PFA)
3. ***Heath v Lincoln Wood Provident Fund*** [2002] 11 BPLR 4046 (PFA)
4. ***Van Rhyn v Pentecostal Protestant Church Pension Fund & Another*** [2001] 1 BPLR 1538 (PFA)
5. ***Coetzee v Toyota South Africa Pension Fund & Others*** (1) [2001] 5 BPLR 2007 (PFA)
6. ***Steyn v Motor Industry Pension Fund*** [2001] 7 BPLR 2263 (PFA)
7. ***Zolezzi v Mine Officials Pension Fund*** [2000] 8 BPLR 937 (PFA)
8. ***Till v Unilever SA Pension Fund*** (1) [2000] 11 BPLR 1297 (PFA)

## Personal liability of trustees

### Cases:

1. ***Matene v Noordberg Group Life-Assurance Scheme & Another*** (2) [2001] 2 BPLR 4788 (PFA)
2. ***Sithole v ICS Provident Fund & Another*** [2000] 4 BPLR 430 (PFA)

## Death benefits v withdrawal benefits

### Cases:

1. ***Ngwenya v Scribante Construction (Pty) Ltd & Others*** [2003] 2 BPLR 4404 (PFA)
2. ***Magane v Engineering Industries Pension Fund*** [2000] 4 BPLR 3365 (PFA)
3. ***Calitz v Iscor Selector Pensioenfonds & Another*** [2000] 6 BPLR 579 (PFA)

## Cost orders

### Cases:

1. ***Jones v National Technikon Retirement Fund & Others*** [2002] 1 BPLR 2960 (PFA)
2. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** [2000] 3 BPLR 287 (PFA)
3. ***Oosthuizen obo Breed v Mercedes Benz of South Africa Pension Fund & Another*** (2) [2000] 11 BPLR 1284 (PFA)