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Please quote our reference: PFA/GA/4297/2005/SM

Dear Sir

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act") – H LUBBE ("the complainant") v SANLAM LIFE INSURANCE LIMITED ("the first respondent') AND PROFESSIONAL PROVIDENT SOCIETY RETIREMENT ANNUITY FUND ("the second respondent")

1. Introduction

[1.1] The complaint concerns the decline in the quoted projected retirement values of the complainant's retirement annuity provided by the first respondent at the inception of his policy.

[1.2] The complaint was received by this office on 12 July 2005. A letter acknowledging receipt thereof was sent to the complainant on 26 September 2005. On the same date letters were dispatched to the respondents giving them until 17 October 2005 to file their responses to the complaint. Responses were received from the respondents on 11 November 2005.

[1.3] These responses were forwarded to the complainant on 29 November 2005 and his further submissions were sought by 13 December 2005, in the event that he wished to make any. This office received the

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Financial Manager: F Mantsho

complainant's further submissions on 16 February 2006.

[1.4] Having considered the submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2. Factual Background

[2.1] The complainant applied for a retirement policy with the first respondent during 1995. The policy commenced on 1 March 1995 with a maturity date of 1 March 2027. The complainant commenced contributing an amount of R101.01 per month on his policy subject to 12% increase with inflation on each policy anniversary. The complainant's retirement capital was estimated at R1 061 558.00 at a lower projection rate of 11% and R1 662 576.00 at a higher projection rate of 14%.

3. Complaint

[3.1] The complainant is not satisfied with the decline in the projected retirement values of his retirement annuity. The complainant contends that the first respondent informed him that his policy will be worth more than a million rand (R1061 558) at the maturity date. However, he submitted that he received a letter from the first respondent dated 24 March 2005 which reflects his retirement value as R381 475.00. Therefore, the complainant alleges that the first respondent made a misrepresentation at the inception of his policy as it showed a negative growth after he took it.

[3.2] Further, the complainant submitted that he wanted to transfer his retirement value to another retirement annuity fund (Allan Gray) as it showed no growth. He alleges that the first respondent refused to allow such transfer.

4. Responses

Response on behalf of the first respondent

Technical point

[4.1] Mr T Ngobeni, the legal advisor of the first respondent, filed a response on behalf of the first respondent. He submitted at the outset that the complainant's complaint does not constitute a complaint in terms of the Act as it is not about the execution of duties by the fund or its administrator. He submitted that the complaint relates to the execution of duties by the first respondent as the insurer under the policy namely,

about the internal operation of the policy, notably the operation and application of the actuarial rules, which constitutes long-term insurance business as defined in the Long-term Insurance Act.

5. The merits

[5.1] Mr T Ngobeni submitted that the complainant's maturity value was calculated correctly according to the actuarial rules that they must apply for this purpose. He indicated that the complainant's policy was invested in Sanlam Life's Balanced Fund and was to provide a minimum maturity value of R73 150.00. He submitted a table which shows the details of the complainant's policy. It reads as follows:

	14658968x4
Total paid-in premiums up to 31/10/2005	R 20 176.16
Less: Total policy fees and administration charges	R 2 034.63
Less: Risk premiums for rider benefits	R 376.41
Equals: Premiums available for investment	R 17 765.12
Plus: Investment return up to 01/11/2005	R 11 155.28
Fund Value of policy on 01/11/2005	R 28 920.40

[5.2] He submitted that the complainant was provided with illustrative values at the inception of his policy and during the term of the policy. He indicated that the illustrative values were based on illustrative growth rates, illustrative maturity rates and inflation rates applicable at the time when the illustrations were done. He further pointed out that the illustrative values were based on the assumption that all contractual premiums would be paid until the maturity date. Thus, he submitted that the illustrative values were not guaranteed.

[5.3] Further, he submitted that the complainant's retirement value was illustrated as follows at the inception of his policy:

"VOORDELE OP UITKEERDATUM

Minimum uitkeerbedrag		R73 150
- teen 'n groeikoers van 11%	R1 061 558	(R279 863)
- teen 'n groeikoers van 14%	R1 662 576	(R541 353)

Die bedrae tussen hakies is die illustratiewe uitkeerwaardes indien premies nie sou.

[5.4] He further submitted that although the rates at which the values were illustrated in 1995 were reasonable at the time, this is not the case today as the inflation rate has experienced a decline from 8.7% in 1995 to 1.4% in 2004. He indicated that this has affected the rates at which the illustrative values were based. He submitted that the actual growth rates were lower over the term of the policy than the rates used in the illustrations. Moreover, he indicated that the maturity values at inception were illustrated on the basis of an annual premium growth of 12%. He

submitted a table which shows the inflation rates over the term of the policy. It reads as follows:

Year	Average annual mainstream inflation
1995	8.7%
1996	7.3%
1997	8.6%
1998	6.9%
1999	5.2%
2000	5.4%
2001	5.7%
2002	9.2%
2003	5.8%
2004	1.4%

[5.5] He submitted that the decline in the inflation rate as shown above indicate the decline in the investment returns experienced over the term of the policy as the investment returns move in line with inflation.

Response on behalf of the second respondent

[5.6] Mr PA Holtzhausen, the principal officer of the second respondent, filed a response on behalf of the second respondent. He essentially submitted that the insurer has confirmed that the complainant's maturity value was calculated correctly according to the actuarial rules. He indicated that illustrative values are based on various assumptions and they are not given as contractual promises. He submitted that the policy document makes this clear. Further, he indicated that the administrator has regularly sent letters to the complainant informing him about the lower illustrative maturity values.

[5.7] With regards to the complainant's wish to transfer his benefit to Allan Gray, he submitted that the complainant has previously declined an offer to change the policy in order that the underlying investment can be managed by Allan Gray.

6. Determination and reasons therefor

Technical point

[6.1] There is no merit in the technical point raised by the respondents. The crux of this complaint does not constitute long-term insurance business, but actually relates to a retirement annuity fund, which is a pension fund organization as defined in the Act. For the reasons more fully set out in *Louw v Central Retirement Annuity Fund and Another* [2005] 5 BPLR 622

(PFA) at paragraphs [17] to [36] and authorities referred to therein, I cannot uphold the contention that this matter constitutes "long-term insurance business" over which I have no jurisdiction.

[6.2] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds & Another* [2005] 8 BPLR 655 (C) at 660D-E confirmed the jurisdiction of this office and stated:

> "The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that application may be exempt in terms of the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of s51(a) [*sic*] of the Act. It cannot simply be treated as an illusionary 'go between' the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act's complaint mechanism."

[6.3] The technical point is therefore dismissed.

<u>The merits</u>

[6.4] Since it is impossible for life insurance companies to give accurate predictions of the value of future benefits, they employ illustrative growth rates as a basis for estimating the value of future benefits. This is especially so in market-linked portfolios. Thus, two illustrative growth rates are normally used: a higher one to illustrate future values against a higher inflationary backdrop, and a lower one using a lower inflationary environment as a backdrop.

[6.5] *In casu*, a lower inflationary backdrop of 11% and a higher inflationary backdrop of 14% were used to illustrate the growth rates of the complainant's retirement policy. The complainant submitted that he does not understand the negative growth of his policy as the first respondent informed him that his policy will be worth more than a million rand at the maturity date. However, it is evident that the complainant's retirement capital was based on certain assumptions as stated in the policy contract. Further, the policy contract states clearly that the illustrative values are not guaranteed and that the actual maturity values will depend, *inter alia*, on the rate of inflation at the relevant time.

[6.6] Moreover, it is clear that the factors affecting the complainant's actual benefit and the fact that the illustrative values are not guaranteed were stated in the policy contract. The apposite portion of the policy contract that was issued to the complainant at the inception of his policy reads as follows under the paragraph titled "*Voorbehoude en Veronderstellings*" :

> "Die illustratiewe waardes in hierdie opgawe is bereken volgens die LOA se voordeel-illustrasieoorenkoms en word nie gewaarborg nie. Die waardes word teen twee veronderstede groeikoerse getoon om 'n aanduiding te gee van hoe 'n verskil in groeikoerse die uiteindelike voordele sal beinvloed. Die illustrasie is nie 'n voorspelling van die werklike voordele wat betaalbaar sal wees nie. Die illustratiewe groeikoerse van 14,00% en 11,00% verteenwoording bruto koerse (voor aftrekking van koste) van onderskeidelik 15,00% en 12,00%, bereken volgens die LOA se voordeelillustrasieooreenkoms."

[6.7] Therefore, it is clear that the policy contract provided that the projected values are not guaranteed and that they depend, *inter alia*, on the benefit illustration by the Life Offices Association ("LOA") and assumed growth rates of 15,00% and 12,00% as stated by the LOA's benefit illustrations. Therefore, the complainant was aware of the factors affecting his actual retirement value and the fact that the illustrative values are not guaranteed maturity values.

[6.8] The respondents submitted that the actual growth rates on the complainant's policy were lower over the term of the policy as the inflation rate declined from 8.7% in 1995 to 1.4% in 2004. Thus, it is clear that the decline in the inflation rate affected the complainant's actual maturity value.

[6.9] The complainant also alleges that the first respondent refused to allow him to transfer his retirement value to another retirement annuity fund (Allan Gray). However, the second respondent submitted that the complainant declined an offer to change his policy in order that the underlying investment can be managed by Allan Gray. The complainant did not submit anything to dispute the second respondent's submissions in this regard.

[6.10] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR