



HEAD OFFICE

Johannesburg

1<sup>st</sup> Floor, Norfolk House  
Cnr 5<sup>th</sup> Street & Norwich Close  
Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town

2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

Please quote our ref: PFA/KZN/3114/05/KM

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 ("The Act"): A. LOMAS-WALKER v PERPETUA RETIREMENT ANNUITY FUND ("the fund") and CAPITAL ALLIANCE LIFE LTD ("Capital Alliance")**

Introduction

- [1] Having considered the complaint that was received by this office on 15 April 2005, as well as further written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the fund on 20 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However, on 22 February 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course.

---

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator)

### The complaint

- [2] Your complaint concerns the application of certain penalties to your fund value after you reduced your contributions. You are also concerned about the decreasing illustrative projections of your retirement benefit.
- [3] You joined the fund on 1 June 1995 for a term of 32 years, the selected retirement date being 1 June 2027. Your initial monthly contribution was R750 which was to escalate by 15% annually on the anniversary date of the commencement of your membership. On 30 October 1996 you requested that the contributions be reduced to R431 per month which was effected from 1 November 1996. You subsequently increased your contributions again from 1 April 1998 to R750 per month. You state that you initially reduced your contributions on the advice of the insurance company (the predecessor to Capital Alliance), and were assured at the time that there would be no penalties as a result.
- [4] In your complaint you query why a portion of your contributions (in an amount of R5 868) have been allocated to your “debt account” since you “have never drawn against the policy”. You also question what the “premium reduction adjustment on expenses” in an amount of R10 464 represents. In addition, you require an explanation of “growth on unrecovered expenses”.
- [5] Regarding the maturity value of your benefit, you state that this has reduced from an initial projection of R27 million in 1995 (R19 500 000 according to Capital Alliance) to a recent illustration showing R6 500 000.

### The response

- [6] A response has been received, presumably on behalf of both respondents, from Capital Alliance, which acts as the administrator and underwriting insurer of the fund. It substantially confirms the figures given by you in respect of your contributions, deductions and illustrative values, apart from the discrepancy in the initial projection noted above.
- [7] On the question of the penalty for the contribution reduction it explains as follows:

“As you have elected to reduce the premium it is necessary for the company to recover costs which were initially anticipated to be based on a higher premium. Hence, the unrecovered expense account and the investment value, reduce accordingly.

...

The premium reduction adjustment is in respect of the unrecouped policy expenses at the date of the premium reduction. The premium was reduced by 50% from R862.50 to R431.25 per month. Likewise the unrecouped expenses were R20,824.56 and was reduced by 50% plus growth, R10,464.52, to R10,412.39.

In addition commission that has not vested was reclaimed from the broker and this was added to the investment account of the policy. Thus the expense debt of R10,464.52 plus the credit of the reclaimed commission of R4,314.12, a net debt value of R6,150.40 was transferred to the investment account."

- [8] Concerning the issue of the contributions allocated to the "debt account", the response refers to Page G110 of the policy document which states:

"Upon payment of a premium the policy fee, if there is one, is deducted. A fixed percentage of the remaining premium (the Allocation Amount) is allocated to the policy, and is fixed unless the policy changes....

The allocation amount is credited to the investment account of the policy."

- [9] The following explanation of "growth on unrecovered expenses" is given:

"Policy expenses are determined up front on the initial premium and on every premium increase. The expenses include broker's commission and administration (policy acquisition) expenses. These are policyholder's expenses incurred. The growth on the unrecovered expenses is the interest charged on the unrecovered expenses. The same growth rate (interest) that is applied to the investment account is applied to unrecovered expense account.

For every premium increase the commission payable is debited to the expense account. This increases the debt account.

...

As explained under point 4 above additional commission was paid to the broker on 1 June when the premium increased. This resulted in the outstanding debt increasing. In addition the growth of the investment portfolio also affects the balance in the debt account."

- [10] Regarding the reducing estimated maturity values, the response states that maturity values now given are quoted on current contributions, and future contributions are not taken into account. In addition, the assumed growth rate has reduced from 14% or 15% to 10%.

#### Determination and reasons therefor

- [11] I have examined both the rules and the policy document and can find no provision in either for the application of a penalty in the event of a reduction in contributions. There is also no provision that permits the respondents to operate an unsolicited "expense account" or to accelerate

the amount of “unrecouped costs” expected to be recovered over the term of membership and to debit such an amount against your fund value in the event of a reduction in contributions. Capital Alliance, and hence the fund in enforcing its underlying contract with the insurer, is limited to the recoupment of the costs and charges as set out on page G110 of the policy, quoted in paragraph [8] above.

- [12] The calculation of the value of the “Master policy” must be in accordance with the terms of the policy document which records the agreement between the fund as proposer and owner of the policy and the insurer in its capacity as underwriter. The fund and the insurer, in its capacity as administrator of the fund, and thus agent for the fund, must ensure that any benefit due to a member is calculated in accordance with these precepts.
- [13] The fund may only do what is set forth in its rules (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239 D). The trustees of the fund are, moreover, under a duty to ensure that the terms of any underlying contract taken out in respect of, and for the benefit of, a member are adhered to by the other contracting party. They may not simply wash their proverbial hands of all responsibility. This sentiment was expressed by Davis, J in *Central Retirement Annuity Fund v Adjudicator of Pension Fund and Others* [2005] 8 BPLR 665 at 660B where he stated:

“The basis of the complaint was that applicant [Central Retirement Annuity Fund] as the holder of the policy on the life of a member, was neither obliged nor entitled simply to allow Sanlam Life [the insurer] to charge whatever costs and charges it chose to levy and to accept whatever investment bonuses that it chose to declare from time to time without first satisfying itself through its own management committee of the reasonableness or adequacy thereof.

The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant 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.” (my underlining)

- [14] The trustees of the fund are, moreover, under a duty to ensure that the terms of any underlying contract taken out in respect of, and for the benefit of, a member are adhered to by the other contracting party. They may not simply wash their proverbial hands of all responsibility. As Davis J stated in the *Central Retirement Annuity Fund* decision (at 660D-E), the fund cannot simply be treated as an illusionary go-between between the members and the insurer. It should be accountable to its members and

hence be subject to the discipline of the Act's complaint mechanism. On the issue of the charges levied by the insurer, Davis J stated as follows (at 663E-G):

"It follows that the reasonableness of the total charges levied by the insurers from time to time in respect of the administration of the fund and the apportionment thereof among beneficiaries are considerations of which account must be taken by Applicant's management committee. Similarly, the reasonableness of investments effected and maintained by the insurer for the fund from time to time should be examined by the management committee, if the latter is to fulfill its fiduciary responsibilities to members. In addition, the adequacy of disclosure of information which is critical to the interests of members, such as an adequate and fair explanation as to the meaning of documents which provide illustrative values at the inception of the contract as well as the adequacy of disclosure by the insurer to members from time to time, must, in the light of the analysis advanced, comprise part of the responsibilities of the management committee of applicant."

- [15] As regards the falling maturity values, I can find no basis on which to award relief. It is clear that such projections were based on particular underlying assumptions, and it has not been demonstrated that they have all been fulfilled, thus entitling you to the earlier illustrative value. On the contrary, several of those underlying assumptions have demonstrably not been fulfilled. The initial rate of return on which the illustrations were based was 14% or 15%. Present projections are based on the much lower return rate of 10%, leading to significantly smaller growth. In addition the basis used to calculate present illustrative values differs from the previous one, insofar as it only includes contributions received to date. Previous values would therefore have been substantially higher as they included future contributions. Also in the present case, your actual contributions were less as a result of your reduction in contributions. It is apparent from the foregoing that the present projection of your retirement value will be substantially lower than that quoted at commencement of your membership.
- [16] If your complaint is rather that the investment returns have been poor, you have not suggested that the board was negligent in terms of the investment decisions taken, or that there was a failure to adopt specified investment strategies. In view of the above, you have failed to establish any entitlement to relief in respect of this aspect of your complaint.

### Relief

- [17] I therefore make the following order:

- [17.1] The complaints regarding investment return and illustrative value are dismissed.

- [17.2] It is hereby declared that the respondents were not entitled to deduct any amount from the Master policy held to determine your benefit by reason only of your reduction of contributions;
- [17.3] The respondents are jointly and severally directed to refund the amount of R6,150.40 debited to your fund share, together with interest at the rate of 15,5% from 1 November 1996 to date of crediting within two weeks of date of this determination.

SIGNED IN CAPE TOWN ON THIS

DAY OF

2006

Yours faithfully

.....  
**VUYANI NGALWANA**  
**PENSION FUNDS ADJUDICATOR**