Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): MM DOLLEY (“complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“first respondent”) AND SANLAM LIFE INSURANCE LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns an enquiry on the termination charge that will be deducted from the fund value when the policy is made paid-up.

1.2 The complaint was received by this Tribunal on 15 July 2010. A letter acknowledging receipt thereof was sent to the complainant on 12 August 2010. On the same date, a letter was sent to the respondents requesting a response to the complaint by no later than 23 September 2010. A response was received from the second respondent on 2 September 2010. No further submissions were received from the parties.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)
1.3 After reviewing the written submissions before this Tribunal it is considered unnecessary to hold a hearing in this matter. This Tribunal’s determination and its reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant applied for and was admitted to the membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 March 2006. The second respondent is the underwriting insurer and administrator of the first respondent. The complainant’s membership was to endure until her chosen retirement date of 11 February 2033. In terms of the policy issued to the complainant, the premium was R400.00 per month increasing annually with the consumer price index on each policy anniversary. The policy offers no investment guarantees. However, the complainant enquired about the impact of making the policy paid-up. The complainant’s investment value on 1 September 2010 (“before the policy is made fully paid-up”) amounts to R25 944.39 whereas the termination charge amounts to R6 390.33 (24.63%).

[3] COMPLAINT

3.1 The complainant is dissatisfied with the termination charge that will be deducted from the fund value when the policy is made paid-up.

3.2 She wants this Tribunal to investigate whether or not the termination charge is excessive.

[4] RESPONSE

Technical Point
4.1 In their joint response, the respondents raised a technical point of lack of jurisdiction. They state that this Tribunal has no jurisdiction to hear the complaint as it relates to the execution of an insurer's responsibilities with regards to the policy and constitutes long-term insurance business as defined in and regulated by the Long-term Insurance Act 52 of 1998. As such, the grievance does not constitute a complaint as defined in section 1 of the Act.

**Merits**

4.2 The second respondent submitted that the reduction in benefit of R6 390.33 for making the policy paid-up was within the parameters of the regulations. When the second respondent entered into the contract, certain expenses were incurred. Their expectation was that the contributions agreed upon would be paid for the full contractual term of 30 years. In this way, the expenses would be recovered over the expected term of the policy out of the charges and fees disclosed in the policy document. The complainant was therefore aware, at inception of the policy, of the fees and charges that would be applied. When contributions are discontinued 23 years prior to the contractual maturity date, they could not recover the expenses. As a result, the second respondent had to recover the portion of the outstanding expenses that could no longer be recouped via a lump sum deduction from the investment value. In terms of the policy, an alteration fee will be recovered when taking an early retirement, reducing the recurring contribution or stopping payment of recurring contributions.

4.3 The rules of the first respondent describe a causal event as one of the following events:

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- the POLICY becomes fully paid-up;
- the basic premium is reduced, without the POLICY thereby coming to an end or becoming fully paid-up;
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4.4 The entitlement of the insurer to deduct the termination charge was clarified in the regulations. This deduction of outstanding expenses is a causal event charge in terms of the regulations. In terms of the regulations, it was determined that in the case of a premium termination, the maximum charge that may be deducted from the fund value of the policy is a percentage of the fund value, being equal to 30%. The causal event charge of 24.63% did not exceed the 30% maximum prescribed in the regulations.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complainant is dissatisfied with the premium termination charge that will be deducted from her fund value when the policy is made paid-up.

Technical point

5.2 The respondents contended that this Tribunal has no jurisdiction to hear the complaint as it relates to the execution of an insurer’s responsibilities with regards to the policy and constitutes long-term insurance business as defined in and regulated by the Long-term Insurance Act 52 of 1998. As such, the grievance does not constitute a complaint as defined in section 1 of the Act.

5.3 The respondents are referred to two judgments of the High Court of South Africa, viz. Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others [2005] 8 BPLR 655(C) at 660C-E and Old Mutual Life Assurance Company (SA) Limited v Pension Funds Adjudicator and Others [2007] 1 BPLR 117 (C) at 124B-C, as well as the judgment of the Supreme Court of Appeal in Mungal v Old Mutual Life Assurance Co SA Ltd; Freeman v Old Mutual Life Assurance Co SA Ltd [2010] 1 BPLR 11 (SCA). These court rulings confirm this
Tribunal’s jurisdiction to adjudicate complaints concerning retirement annuity fund members’ fund values and any charges levied by underwriting insurers and administrators on members’ contracts. Therefore, the complaint has been properly lodged with this Tribunal.

5.4 The preliminary points are dismissed and the merits of the complaint will now be considered.

_Causal event charges_

5.5 This Tribunal needs to determine the reasonableness of the causal event charges imposed. The basis for imposing causal event charges needs to be determined and it must be decided whether or not the causal event charges to be levied by the second respondent is fair and reasonable. In this regard Fourie J, in _Old Mutual Life Assurance Company (SA) Ltd v Pension Funds Adjudicator and Others_ [2007] 1 BPLR 117 (C) at paragraph 35, noted that:

“The fact that the policy does not specify a formula according to which the paid-up reduced benefit is to be calculated, does not mean that Applicant has an unfettered discretion to arbitrarily determine a value in a manner that is unfair, unreasonable or capricious. In this regard, I am in agreement with Applicant’s submission that the provisions of the LTIA, referred to hereunder, dictate that the paid-up reduced benefit to which Second Respondent is entitled has to be calculated in accordance with generally accepted actuarial principles and practice.”

5.6 With the learned judge having confirmed that causal event charges may be imposed by underwriting insurers, what remains is to ascertain the fairness and reasonableness of the causal event charges imposed. This Tribunal takes cognisance, firstly, of the provisions of section 46 of the LTIA, which reads as follows:

“A long-term insurer shall not-
(a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;

(b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or

(c) award a bonus or similar benefit to a policy-holder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose."

5.7 Further, section 52 of the LTI Act prescribes the manner in which long-term policies are to be dealt with in the event of premature cessation of contributions. The insurer must have rules approved by the statutory actuary that prescribe a sound actuarial basis and the method to be used to value a long-term policy in the event of a causal event occurring. Thus, the benefits and values attaching to a prematurely terminated policy, and any distinctions between it and policies that do not prematurely terminate, must be actuarially sound.

5.8 Lastly, in addition to the requirement that causal event charges must be computed using generally accepted actuarial principles that ensure the actuarial soundness of the insurer, on 1 December 2006, the Minister of Finance promulgated regulations in terms of the LTIA that stipulate that in the case of a premium termination, the maximum charge that may be deducted from the fund value of the policy is a percentage of the fund value not exceeding 30%.

5.9 This Tribunal requested an independent actuary to review the causal event charges imposed on the complainant’s investment value. He found that the causal event charges of R6 390.33 were not unreasonable and are in line with the regulations.
5.10 After careful consideration of the facts placed before this Tribunal it is evident that the second respondent acted in accordance with generally accepted actuarial practice, the provisions of the rules, the provisions of the policy documents, the provisions of the LTIA and the regulations. This Tribunal accordingly finds that the submissions do not support the complainant’s submission that the causal event charges imposed are unfair, unreasonable or capricious in nature.

[6] ORDER

1. In the result, this complaint cannot succeed and is hereby dismissed.

DATED AT JOHANNESBURG ON THIS 13TH DAY OF NOVEMBER 2012

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MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M Filing: Magistrate Court
Parties unrepresented