DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): TS KENNY (“complainant”) v LIFESTYLE RETIREMENT ANNUITY FUND (“first respondent”) AND LIBERTY GROUP LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the quantum of the causal event charge imposed up on the transfer of the complainant’s fund value to another retirement annuity fund and its investment performance.

1.2 The complaint was received by this Tribunal on 12 October 2010. A letter acknowledging receipt thereof was sent to the complainant on 26 October 2010. On the same date, a letter was sent to the respondents requesting a response to the complaint by no later than 26 November 2010. A response dated 8 November 2010, which was also forwarded to the complainant, was received from the first respondent. No further submissions were received from the parties.
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 September 2007. Policy number 0018501946 was issued to the complainant. The second respondent is the underwriting insurer and administrator of the first respondent. The complainant’s membership was to endure until his chosen retirement date of 1 September 2019. In terms of the policy issued to the complainant, the premium was R2000.00 per month increasing at 15% per annum. However, the complainant transferred his fund value to another fund on 1 October 2010. The complainant’s investment value on 31 August 2010 was R89 932.85 (“pre-causal event fund value”) and as a result of the transfer a causal event charge of R9 584.10 (9.21%) was imposed resulting in the complainant’s fund value decreasing to R80 253.46 (“post-causal event fund value”). The retirement proceeds of R85 941.58 were transferred via section 14 of the Act, on 1 October 2010.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the causal event charge imposed by the second respondent upon transfer to another retirement annuity fund and poor investment performance.

3.2 He wants this Tribunal to investigate whether or not the causal event charge is excessive, and the reasons for the poor investment performance.
4.1 The respondents confirmed the facts summarised above. They state that the reduction in benefit of R9 584.10 for the purpose of a transfer in terms of section 14 of the Act to another retirement annuity fund 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 13 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 were discontinued prematurely after 3 years and 1 month, the second respondent had to recover the portion of the outstanding expenses that could no longer be recouped over the term of the policy by a lump sum deduction from the investment value. In terms of the policy, if the complainant transfers the benefits to another provider, a charge calculated as a percentage of the Regular Investment Contributions paid to the date of transfer, will be deducted from the Investment Value.

4.2 The rules of the first respondent describe a causal event as any one or more events so identified in the regulations to the extent that such events are applicable in accordance with the policy prescriptions and without limiting the generality of the definition. The rules further state that a causal event charge will happen where the policy is surrendered in full or in part for the purpose of a transfer. Furthermore, the rules define a causal event charge as a charge raised against the policy by the insurer, in accordance with the policy prescriptions and the regulations, occasioned by and pertaining to a causal event. The entitlement of the insurer to deduct the outstanding expenses was clarified in the regulations. This deduction of outstanding expenses is a causal event charge in terms of the regulations. The causal event
charge of 9.21% did not exceed the 30% maximum prescribed in the regulations.

4.3 The first respondent further submitted that regarding the performance of the investment, the ultimate value of any market related policy is dependent on the performance of the portfolios to which it is linked. The first respondent submitted that the performance of each portfolio chosen was affected by the global economic downturn which resulted in equity markets plunging by more than 40% in 2008 and 2009. The first respondent further submitted that the relatively short period of investment, three years and one month, together with the poor performance of the markets, contributed to the low return on the complainant’s investment.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issues to be determined are firstly, whether the causal event charge imposed by the second respondent on the complainant’s transfer of his investment value to another retirement annuity fund was reasonable; and secondly, the reasons for the complainant’s policy’s poor investment performance.

Causal event charge

5.2 This Tribunal needs to determine the reasonableness of the causal event charge imposed. The basis for imposing causal event charges needs to be determined and it must be decided whether or not the causal event charge 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.”

5.3 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 charge imposed. This Tribunal takes cognisance, firstly, of the provisions of section 46 of the LTIA Act, 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.”

5.4 Further, section 52 of the LTIA 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.

5.5 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 LTI Act that stipulate maximum causal event charges in respect of causal events that occurred on or after 1 January 2001.

5.6 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 LTI Act and the regulations. The causal event charge of R9 584.10 was fair and reasonable and in line with the regulations. This Tribunal accordingly finds that the submissions do not support the complainant’s submission that the causal event charge imposed is unfair nor unreasonable.

Poor investment performance

5.7 The first respondent submitted that the ultimate value of any market related policy is dependent on the performance of the portfolios to which it is linked. The performance of each of the portfolios chosen by the member was affected by the global economic downturn which resulted in equity markets plunging by more than 40% in 2008 and 2009. The portfolios to which the policy was linked, were suitable for medium to long term investments. The first respondent further submitted that the relatively short period of investment together with the market volatility experienced for a substantial portion of the investment period, contributed to the low return on the complainant’s investment. There is no duty or obligation on the Board of the first respondent to provide investment advice to the members of the fund in relation to
their individual choice of the range of investment portfolios made available to them, that duty rests with the members themselves.

[6] ORDER

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

DATED AT JOHANNESBURG ON THIS 19th DAY OF NOVEMBER 2012

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MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M Filing: Magistrate Court
Parties unrepresented