Dear Madam,

DETERMINATION IN TERMS OF SECTION 30A OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): NA MSOMI (“complainant”) v PROFESSIONAL PROVIDENT SOCIETY RETIREMENT ANNUITY FUND (“first respondent”) AND SANLAM LIFE INSURANCE LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the early termination charge that will be imposed on the complainant’s retirement annuity fund value if she transfers her fund value to another fund.

1.2 The complaint was received by this Tribunal on 9 April 2013. On 3 May 2013, a letter was sent to the respondents giving them until 3 June 2013 to file their responses. A letter acknowledging receipt of the complaint was sent to the complainant on 6 May 2013. Responses were received from the first respondent on 31 July 2013 and from the second respondent on 12 August 2013. No further submissions were received from the parties.
After reviewing the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] **FACTUAL BACKGROUND**

2.1 The complainant has a retirement annuity policy with the first respondent, which commenced on 1 June 2005 subject to a maturity date of 23 February 2033. Her retirement annuity policy commenced with a monthly premium of R220.00 per month subject to annual increase of 15% on the policy anniversary. The complainant’s policy is invested in the Balanced Fund (low equity) and is still in force.

2.2 On 13 March 2013, the complainant requested a quotation of the termination charge that will be imposed if she transfers her fund value to another fund. The second respondent provided the complainant with a quotation which indicates that there will be a termination charge of R45 860.82 from her fund value of R152 869.41 as at 13 March 2013. The termination charge that will be imposed on the complainant’s fund value upon transfer to another fund is the subject matter of this complaint.

[3] **COMPLAINT**

3.1 The complainant is dissatisfied with the fact that a termination charge of R45 860.82 (30% of fund value) will be imposed on her policy value if she transfers her fund value to another fund. She contends that the termination charge of 30% is too high as she has been paying policy fees and commission to a broker since 2005. The complainant states that she does not understand why she should be penalised for transferring her policy value to another fund. She asserts that the first respondent agrees that the termination charge should decrease every year and it was also explained like that during its roadshows.
3.2 The complainant requests this Tribunal to investigate whether or not the termination charge that will be imposed on her policy is fair and reasonable having regard to the fact that she has paid all policy costs or fees.

[4] **RESPONSES**

*First respondent*

4.1 The first respondent submits that this Tribunal should limit its investigation to the conduct of the second respondent as its insurer and administrator. It asserts that when it was originally registered, the only assets available for investing member’s retirement contributions were insurance policies issued by long-term insurers on the lives of individual members. However, members subsequently found themselves tied up in inflexible products which have negative consequences when they want to reduce or terminate their contributions. It contends that during 2006 and 2007, the then Adjudicator took note of this trend and declared the termination charges invalid. This was followed by a Statement of Intent which sought to regulate the imposition of termination charges.

4.2 The first respondent states that it noticed a steady increase in the number of members who applied for transfers to other funds in terms of section 14 of the Act after the legislation was amended to allow transfers to other funds in 2007. It submits that statistics showed that the majority of these transfers had been affected to funds where the underlying investments consisted of unit trusts. This is due to the fact that unit trusts based funds are more flexible in that they allowed members to terminate contributions without incurring any causal event charges. It contends that its rules were amended on 12 July 2010 in
order to include unit trust investments and to eliminate the need for members to effect a section 14 transfer out of the fund.

4.3 However, the first respondent submits that the second respondent continued to levy termination charges on occurrence of a causal event. This led to an anomaly that a member who simply wishes to move his accumulated benefit to another investment vehicle within the same fund is penalised. The first respondent asserts that on 20 July 2012, it requested the second respondent to remove the causal event charges but it refused. The first respondent referred to Outcome 6 of the Treating Customer Fairly (TCF) initiative by the Financial Services Board (“FSB”), which states that “customers do not face unreasonable post sale barriers to change products, switch providers.” It submits that the levying of termination charges by an insurer must generally be regarded as a post-sale barrier as envisaged by TCF Outcome 6.

4.4 The first respondent concludes that due to the fact that the second respondent relies on contractual clauses, it is defenceless in terms of enforcing a change in respect of this issue. It asserts that the second respondent is in a better position to respond to the complaint as it relates to the levying of excessive termination charges by it.

Second respondent

4.5 The second respondent submits that the charges levied on the complainant’s policy value is justified in terms of current legislation and is in accordance with generally accepted actuarial principles. It confirms that on 13 March 2013, the complainant requested an intra-fund conversion quote within the first respondent. It avers that in terms of the Regulations of the Long-term Insurance Act 52 of 1998 (“the Long-term Insurance Act”), a maximum causal event charge of 30% of fund value has to be imposed on the complainant’s policy. It provides a
table which reflects the complainant’s policy value and the causal event charge that will be imposed:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross illustrative transfer benefit on 13/03/2013</td>
<td>R152 869.41</td>
</tr>
<tr>
<td>Minus: Termination charge</td>
<td>R45 860.82</td>
</tr>
<tr>
<td>Equals: Gross transfer benefit</td>
<td>R107 008.59</td>
</tr>
<tr>
<td>Minus: Uncleared premium</td>
<td>R2 344.29</td>
</tr>
<tr>
<td>Equals: Illustrative net transfer benefit on 13/03/13</td>
<td>R104 664.30</td>
</tr>
</tbody>
</table>

4.6 The second respondent referred to its policy contract which states that it is authorised to recover alteration fees from the policy value when a member takes early retirement benefit, reduce contributions or stop payment of contributions. It also provided a breakdown of the causal event charge, which reads as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed fee (previously R325.00)</td>
<td>R425.00</td>
</tr>
<tr>
<td>Plus: Premium part (R2 344.29 (premium) 0.06 (reduction in the monthly savings premium) 212.52 (outstanding term in months) = R29 892.51 – R909.60 (commission claw back)</td>
<td>R28 982.91</td>
</tr>
<tr>
<td>Plus: Fund part (R152 869.41 (fund value) 0.012 (amount taken from the value of the policy investment) 17.71 (outstanding term in years)</td>
<td>R32 487.81</td>
</tr>
<tr>
<td>Termination charge before tested against the maximum acceptable</td>
<td>R61 895.72</td>
</tr>
<tr>
<td>Maximum termination charge acceptable (30% of fund value)</td>
<td>R45 860.82</td>
</tr>
<tr>
<td>Termination charge after test against the maximum acceptable</td>
<td>R45 860.82</td>
</tr>
</tbody>
</table>

4.7 The second respondent contends that the illustrative early termination charge of R45 860.82 (30% of the fund value) is justified as the charge is 30% within the Regulations of the Long-term Insurance Act. It referred, *inter alia*, to rule 25 of the first respondent’s rules which provides that any change in the policy benefits on account of a causal event will result in the fund’s liability to a member changing. It states
that in terms of the first respondent’s rules, a causal event occurs if the policy is surrendered in part or in full for the purpose of a section 14 transfer from one fund to another. It asserts that in order for the intra fund transfer to take place, the complainant’s policy will need to be surrendered, which will result in a causal event.

4.8 The second respondent concludes that the Adjudicator’s previous ruling of termination charges was overruled on appeal in the matter of Mungal v Old Mutual Freeman 2010 (6) SA 98 (SCA). The Statement of Intent that was signed on 12 December 2005 also laid the matter to rest. Further, it asserts that TCF Outcome 6 cannot trump the law or cause the infringement of existing rights.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issue that falls for determination is whether or not the early termination charge that will be imposed to the complainant’s policy is fair and reasonable. The complainant believes that she should not be charged any termination charge as she has paid all policy fees.

The causal event charge

5.2 In terms of rule 16.5 of the first respondent’s rules, the surrender of a policy for the purpose of a transfer to another fund necessitates the deduction of an early termination charge, in accordance with the terms and actuarial basis of the policy. A causal event in relation to the complainant’s policy will result if the policy is surrendered in part or in full for the purposes of a transfer from one fund to another in terms of section 14 of the Act.
5.3 Thus, an early termination charge on a member’s fund value in the event of surrender of the policy prior to the maturity date is applied in terms of the first respondent’s rules and the policy conditions. In light of the first respondent’s rules and the complainant’s policy, the respondents are authorised to deduct an early termination charge if the policy is surrendered before the maturity date.

5.4 As regards the basis for imposing the charges and whether it was fair and reasonable 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.”

5.5 The second respondent has provided a breakdown of the complainant’s fund values and the termination charge that will be imposed in the event that she transfers her fund value to another fund. Her illustrative fund value as at 13 March 2013 amounted to R152 869.41. The complainant was advised that an uncleared premium of R2 344.29 and a causal event charge of R45 860.82 will be imposed in the event of a section 14 transfer of her fund value to another fund. Her illustrative net transfer value amounted to R104 664.30 as at 13 March 2013.

5.6 The early termination charge will amount to a reduction of 30% of the complainant’s fund value. The second respondent has shown that the causal event charge was computed correctly in terms of actuarial rules as stated in the ruling above and is within the maximum amount that can be imposed on the policy. The second respondent is bound to
impose a causal event charge in the event of a surrender of the policy for the purposes of a section 14 transfer and have no discretion to waive the termination charge.

5.7 This Tribunal engaged the services of an independent actuary who also confirmed that the early termination charge is reasonable and within the maximum allowed in terms of the Regulations to the Long-term Insurance Act. It follows that the complaint falls to be dismissed.

5.8 Further, this Tribunal takes note of the first respondent’s resolve to stop the practice of deducting causal event charges, particularly in circumstances where a member simply wishes to transfer to another investment vehicle within the same fund. The submissions indicate that the board of the first respondent is trying its best to act in the best interest of its members in terms of protecting their retirement savings against unnecessary deductions from their fund values. Although the second respondent is acting in terms of its policy provisions, there is clearly a need for further investigation of this issue, including possible legislative intervention. Thus, this matter will be referred to the insurance department of the Financial Services Board for further consideration and engagement with both the first and second respondents.

[6] ORDER

1. In the result, the complaint cannot be upheld and is dismissed.

DATED AT PRETORIA ON THIS 30TH DAY OF SEPTEMBER 2013
MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR