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REGISTERED POST

Dear Sir,

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

[1] INTRODUCTION

- 1.1 This matter concerns the quantum of the causal event charge that will be imposed on the complainant’s retirement annuity policy when he decided to transfer his membership to another fund.
- 1.2 The complaint was received by this Tribunal on 4 February 2014. A letter acknowledging receipt thereof was sent to the complainant on 12 February 2014. On the same date, a letter was dispatched to the respondents informing them about the complaint and giving them until 12 March 2014 to file their responses to the complaint. A response was received from the second respondent on 26 March 2014. On 27 March 2014, a copy of a response was forwarded to the complainant to file his

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further submissions by 10 April 2014. Further submissions were received from the complainant on 30 March 2014.

- 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 membership of the first respondent, which is a registered retirement annuity fund in terms of the Act. Policy 0029769455 was issued to the complainant and commenced on 1 November 2005 with a maturity date of 1 November 2043. The second respondent is the underwriting insurer and administrator of the first respondent.
- 2.2 The complainant obtained a quote from the second respondent for early exit on his retirement annuity. The second respondent informed him of a 22% penalty on his investment if he decides to transfer his funds to another institution. The complainant's value in the first respondent was R219 606.97. The second respondent quoted a causal event charge in the amount of R48 313.53 on the complainant's fund value. Thus, the complainant's fund value will be reduced to R171 293.44 ("post causal event fund value").

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the causal event charge that was quoted on his fund value if he transfers his fund credit to another institution. He stated that he considers this penalty to be harsh

considering that he has been with the first respondent since 2005. He mentioned that he has increased his premiums on his own accord and is now paying R5 808.00 and not the original monthly premium of R150.00. He stated that had he continued with the original premiums, he would have been paying R326.00 per month which means that his investment value would have been significantly less, resulting in much less penalties.

- 3.2 The complainant requests this Tribunal to compel the first respondent to waive this penalty. He feels that the first respondent has no right to claim 22% on current investment value as he elected to increase his premiums on his own accord.

[4] RESPONSE

- 4.1 The second respondent submitted that it has noted that the complainant has utilised the services of three different financial advisors over time to assist him in his financial planning and through those interventions increases were made to his contributions.
- 4.2 The second respondent confirmed further that the policy was issued on 1 November 2005 with an initial monthly premium of R150.00 with an annual contribution increase of 10% *per annum*. It stated that the policy was issued for a term of 38 years and the first option retirement date is 1 November 2043. It mentioned that several voluntary premium increases have been made by the complainant since inception.
- 4.3 The second respondent submitted that expenses were incurred on the initial premium for the full contracted term of the policy and on every premium increase thereafter for the remaining term in relation to the increases. These expenses consist of initial and renewal commission plus initial policy acquisition cost and monthly renewal expenses. It

provided a table showing the premiums received to date as well as the commission paid on each increase as follows:

Start date	End date	Premium Payable monthly	Commission paid to financial adviser
1/11/2005	31/10/2006	R 150.00	R 1 350.00
1/11/2006	31/10/2007	R 165.00	R 579.60
1/11/2007	31/10/2008	R 181.50	R 179.82
1/11/2008	30/11/2008	R 199.65	R 189.29
1/12/2008	31/10/2009	R1 000.00	R 6 338.77
1/11/2009	31/01/2010	R1 100.00	R 3 355.50
1/02/2010	31/10/2010	R2 000.00	R 8 100.00
1/11/2010	31/03/2011	R2 200.00	R 2 100.00
1/04/2011	31/10/2011	R2 500.00	R 5 400.00
1/11/2011	28/02/2012	R2 750.00	R 2 850.00
1/03/2012	30/10/2012	R4 800.00	R19 350.00
1/11/2012	30/10/2013	R5 280.00	R11 200.00
1/11/2013	current	R5 808.00	R 6 192.00

- 4.4 It submitted that all initial, ongoing and ad hoc expenses incurred are recovered from the following charges as stipulated in the policy document:

Contribution charge: 4.50% of the monthly premium, net of the policy fee
 Management fee: 1.92% *per annum*, applied monthly to the investment value of the policy.

- 4.5 It stated that other ongoing charges applied to the policy as disclosed in the policy document are as follows:

Guarantee charge: 1% of the monthly contribution, net of the policy fee. This fee provides for the shortfall that may be needed to be paid if the guaranteed value becomes payable on maturity or death.

Policy fee: R12.00 per month

- 4.6 It mentioned that these charges apply to each premium as and when it is paid. On early termination of the policy, the expenses not yet recovered can no longer be recovered via the contribution charge and the management fee. As a result, a lump sum deduction is then made from the investment value of the policy to recover the outstanding expenses.
- 4.7 It submitted that the section 14 transfer value quoted on 20 January 2014, was as follows:

Investment value	R219 606.97
Total outstanding expenses that have not yet been recovered	R 48 313.53
Section 14 transfer value	R171 293.44
Expenses deducted as a percentage of the investment value	22.00%

- 4.8 The second respondent submitted that the deduction of 22% made in respect of unrecovered expenses from the policy's investment value if a section 14 transfer is effected, is within the limits prescribed by legislation as well as the rules of the first respondent.

Further submissions

- 4.9 The complainant submitted that he was never made aware that penalties would be applicable as well as the extent of the penalties when signing the retirement annuity. He stated that he learnt about it when he made an enquiry about cancelling his retirement annuity.

[5] **DETERMINATION AND REASONS THEREFOR**

Introduction

- 5.1 The issue to be determined is the reasonableness of the causal event charge that will be imposed by the first respondent if the complainant transfers his fund value to another institution.

The fund rules and the causal event charges

- 5.2 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E) and section 13 of the Act.
- 5.3 Rule 5.3 of the first respondent's rules dealing with the transfer of member's benefits provides as follows:

"5.3 TRANSFER OF MEMBER'S BENEFITS

5.3.2 Prior to the payment of any BENEFIT, a MEMBER may submit a written request to the BOARD OF MANAGEMENT, in such manner or format as the BOARD OF MANAGEMENT may require, to consider the transfer of the MEMBER'S TRANSFER VALUE in the FUND to another APPROVED FUND.

5.3.2.1 The transfer will constitute a CAUSAL EVENT and may give rise to CAUSAL EVENT CHARGES."

- 5.4 The basis for imposing causal event charges needs to be determined and it must be decided whether or not the causal event charge that would 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.”

5.5 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 that would be levied by the second respondent. This Tribunal takes cognisance, firstly, of the provisions of section 46 of the Long Term Insurance Act No.52 of 1998 (“LTI 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.”

5.6 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.

5.7 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.

- 5.8 In determining the reasonableness of the causal event charge that the first respondent will impose if the complainant transfers his fund value through a section 14 transfer, this Tribunal engaged the services of an independent actuary to assess the charges imposed. The actuary considered the first respondent's rules, the policy terms, the provisions of the Act and LTI Act, generally accepted actuarial principles and the regulations before reaching a conclusion on the reasonableness of the causal event charges.
- 5.9 The actuary found that as the policy has been in force for 9 years out of 38 years and the large extra increases in premiums, the proposed causal event charge in the amount of R48 313.53 that will be imposed if the complainant transfers his membership to another institution amounts to 22% of the total fund and is also fair and reasonable. Therefore, this Tribunal finds that the causal event that will be imposed if the complainant transfers his membership to another institution is fair and reasonable.
- 5.10 It is in relation to this kind of result that the National Treasury saw it fit to introduce Treating Customers Fairly ("TCF") principles which are intended to culminate in the legislation that will guide the relationship between the financial industry and consumers. Although it is intended to culminate in legislation, it is also intended as a tool for self-regulation by the industry to measure themselves as to whether or not in doing their business they are dealing fairly with the consumer by, *inter alia*, providing them with sufficient and clear information that will enable them to make informed choices when acquiring financial products.

Firms are expected to demonstrate that they deliver the following 6 TCF principles to their customers throughout the product life cycle:

- Customers are confident that they are dealing with firms where the fair treatment of customers is central to the firm's culture;
- Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly;
- Customers are given clear information and are kept appropriately informed before, during and after the time of contracting;
- Where customers receive advice, the advice is suitable and takes account of their circumstances;
- Customers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect; and
- Customers do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.

5.11 This Tribunal notes with concern the weaknesses in regulations in the retirement sector when viewed in light of the six TCF principles. This is due to the fact that most retirement annuity products fails four of the TCF principles in that the products and services sold are not designed to meet the specific needs of the customers. In the event that a customer fall on hard times, drastic termination fees are imposed, customers are not given clear information before and after contracting of causal event charges, the advice provided is not suitable and customers faces serious post-sale barriers in trying to change investment products.

5.12 In *casu*, the complainant submitted that he was not aware of the penalties to be charged when he transfers his membership to another institution, which falls short of the openness required by the TCF principles with which the respondents associate themselves. It is on this basis that the TCF principles need to be finalised and enacted into law in order to avoid complaints of this nature.

5.13 However, until such time that the TCF Principles are enacted into law, the complainant is bound by the signature on his annuity contract. In terms of the *caveat subscripto* rule, when a party to a written contract signs it, he is presumed to be aware of all the terms and conditions of the contract, and is bound thereby. It will not, in general terms, avail the complainant to subsequently protest that he was not aware of the offending term or that he signed the agreement without understanding the meaning and implication of the offending term, or that the inclusion of the offending term is grossly unfair to him.

5.14 This Tribunal finds that the second respondent, in deducting the 22% from the complainant's fund value, will be acting 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.

[6] ORDER

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

DATED AT PRETORIA ON THIS 24TH DAY OF APRIL 2014

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented

