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Dear Madam,

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

[1] INTRODUCTION

1.1 The complaint concerns the lack of growth of the complainant's fund value.

1.2 The complaint was received by this Tribunal on 6 May 2016. A letter acknowledging receipt thereof was sent to the complainant on 13 May 2016. On the same date, the complaint was forwarded to the respondents requesting them to file their responses by 13 June 2016. On 26 May 2016, a response was received from the second respondent. On 17 June 2016, a copy of the second respondent's response was forwarded to the complainant requesting her to file

further submissions, if any. Further submissions were received from the complainant on 13 June 2016 and 17 June 2016.

1.3 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 applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act. Policy number 0021009974 was issued to the first respondent for the benefit of the complainant. The policy commenced on 1 August 2002 with a premium of R150.00 per month with no annual premium increase. The policy was issued for a term of 14 years. The second respondent is the underwriting insurer and administrator of the first respondent.

[3] COMPLAINT

3.1 The complainant is aggrieved with the fact that over the past 3 to 5 years, the value of her policy has decreased by R20 000.00. She stated that she was informed that she could expect a maturity value of R65 000.00. She mentioned that the second respondent informed her that a retirement annuity is not guaranteed growth. She stated that if she had deposited R150.00 per month into a fixed term deposit at any reputable bank, her return would have been larger.

3.2 She mentioned that she trusted the first respondent to look after her money in order to cater for her daughter's education, however that will no longer be possible. She requests this Tribunal to order the first respondent to pay her what she would have received if she had invested in a fixed term deposit.

[4] RESPONSE

4.1 The second respondent submitted a response in its capacity as the underwriting insurer and administrator of the first respondent. The second respondent confirmed that the policy commenced on 1 August 2002 with a premium of R150.00. The contract was issued for a term of 14 years, and the first option retirement date was 1 August 2016.

The table below reflects the values applicable on the policy:

Total Premium received	R24 000.00
Investment value as at 23 May 2016	R41 143.67

4.2 It mentioned that the following fees and charges were deducted from the complainant's policy:

- Policy fee: R12.00 per month;
- Contribution charge: 4.30% of each contribution received, net of the policy fee;
- Guarantee charge: 1% of credits to investment;
- Management fee: 1.92% per annum (STANLIB Money Market) and 1.50% per annum (Lifestyle Property CPI and Global Managed), applied monthly to the investment value. The management fee applicable to the Lifestyle Property CPI and Global Managed portfolios is an implicit charge that is built into the portfolio unit price and not deducted from individual policies. It is charged at fund level and not at policy level.

Illustrative values

4.3 The second respondent submitted that the illustrative values quoted in the policy document, using the assumed growth rates of 6% and 12%, were not guaranteed values. It stated that the illustrative maturity value

of a policy is calculated using the actual investment value at the date of calculation, projected at the assumed future growth rate applicable at that time. The second respondent submitted that the rate is determined by the Association for Savings Investment South Africa ("ASISA"), which is a body that governs the insurance industry. It indicated that in August 2002, when the policy was issued, the illustrative rates were 6% and 12% *per annum*. The current illustrative rate, used since end of August 2002, is 10% *per annum*. It submitted that the actual value at maturity will be determined by the actual growth of the underlying investment portfolio/portfolios.

4.4 The second respondent submitted that when calculating future values on a fund policy, it makes the following assumptions:

- No changes are made to the fund policy between the date of the quote and future dates.
- If the future date is less than 12 months from the date of calculation, it also assumes that there will be no growth on the fund policy because of volatility in the economic environment.
- If the future date is more than 12 months from the current date, the current asset value and future investment amounts grow at 10% a year.

4.5 It states that if the actual growth in any year is less than the assumed rate, then the estimated values will be lower than previously estimated and *vice versa*. It submitted that in the new business quote, the illustrative values quoted at age 55 last, namely 1 August 2016, were:

Illustrative retirement funds at 6%	R36 370.00
Illustrative retirement funds at 12%	R57 780.00

It submitted that taking into account the actual growth of 8.13% *per annum*, compared with the illustrative values at 6% and 12%, the current investment value of R40 806.73 is reasonable.

Performance

4.6 It further submitted that the above policy was invested equally in the Lifestyle Property CPI portfolio and Global Managed portfolio at the date of commencement. In December 2007 the STANLIB Money Market portfolio was added as 16.56% of the funds were invested offshore in the Global Managed portfolio and it had reduce to 15%. This change was processed in order to comply with Regulation 28 of the Pension Funds Act.

Lifestyle Property CPI Portfolio ("LPP")

4.7 The second respondent submitted that this portfolio's primary objective is to provide the investor with steady, inflation beating returns over the long term. The portfolio consists of high quality direct property investments owned by Liberty and allows the investor to participate in the rental income and capital returns generated from the underlying assets, for a relatively small investment amount. It stated that some of these assets include the likes of Sandton City and Eastgate Shopping Centres. This portfolio is suited to the investor who:

- Wants exposure to high quality unlisted properties that are not as sensitive to fluctuations in interest rates and market sentiment as their listed counterparts;
- Wants a portfolio that aims to generate sustainable inflation beating returns; and
- Has an investment horizon of at least 5 years

4.8 It indicated that the Lifestyle Property CPI portfolio offers an investment performance guarantee of CPI, subject to a maximum of 8% *per annum*, applied to the allocation amount. It states that the expected return on the Lifestyle Property CPI portfolio is CPI plus 3% and the average CPI from August 2002 to May 2016 was 5.75%. It submitted that the average annual growth achieved on the portion of the funds invested in the Lifestyle Property CPI portfolio from 2 August 2002 to

23 May 2016 was 9.53% *per annum*, which exceeded the expected return.

Lifestyle Global Managed Portfolio ("LGMP")

4.9 The second respondent submitted that the LGMP provides exposure to an internationally balanced mix of assets. It consists of a managed mix of bonds and equities denominated in foreign currencies, with exposure to a number of different global regions, enabling investors in the Portfolio to participate in the stability and strength of the major economies of the world. It stated that the portfolio provides a guaranteed minimum return at specific dates. This portfolio is suited to the investor who:

- Wants a balanced high calibre investment with security of capital;
- Wants to invest in equities and secure high yielding fixed interest instruments, both domestic and offshore;
- Has an investment horizon of at least 10 years; and
- Is prepared to accept high fluctuations in returns from year to year

4.10 The second respondent indicated that the LGMP offers an investment performance guarantee of return of premiums. The expected return on the LGMP is CPI plus 4.5%. The average annual growth achieved on the portion of the funds invested in the LGMP from 2 August 2002 to 23 May 2016 is 9% *per annum*. It stated that the main reasons that the growth achieved on this portfolio is less than the expected return is due to the Euro crises, together with the debt crises in the US during 2008, as well as the slowdown in the economic growth in China last year.

Stanlib Money Market Fund Portfolio

4.11 The primary performance objective of the portfolio is to obtain as high a level of current income as is consistent with capital preservation and

liquidity. Capital gains will be of an incidental nature. This portfolio is suited to the investor who:

- Wants to preserve capital on a monthly basis;
- Wants to invest in short-term gilt edged and other fixed interest investments;
- Has an investment horizon of at least 4 years; and
- Is prepared to accept some fluctuations in returns from year to year.

The average annual growth achieved on the portion of the funds invested in the Stanlib Money Market Fund portfolio from 2 August 2002 to 23 May 2016 is 6.53% *per annum*.

4.12 The second respondent stated that the overall average net growth achieved over the term of the policy from date of commencement to 23 May 2016 is 8.13% *per annum*, which is in line with the overall average expected growth, taking into account all portfolios.

Communication

4.13 The second respondent submitted that it provides annual update letters urging members to review their policies to ensure that the current details and portfolio selection is still appropriate, taking into account their current circumstances and needs. It submitted that it provides a diverse range of investment portfolios to suit varying risk profiles of policyholders which can range from aggressive to conservative risk profiles. It states that having made a range of portfolios available, it is up to the member through his or her advisor to choose a portfolio matching his/her individual risk profile. It mentioned that it has reviewed the calculation spreadsheets provided by the complainant and has found the following inconsistencies:

- This policy commenced on 1 August 2002, whereas the spreadsheet is based on an issue date of 1 August 2001;

- The calculations were based on the assumption that premiums were received annually in advance, whereas the premiums were payable monthly on this policy;
- No monthly fees and charges were taken into account.

4.14 In conclusion the second respondent submitted that the average annual growth rate of 8.13% achieved from inception to the current date on the combined portfolios, is in line with the portfolio objectives reflected above. It confirmed that the current values on this policy are correct and cannot be compared to the fixed interest deposit calculations provided by the complainant due to the inconsistencies listed above.

Complainant's further submissions

4.15 The complainant submitted that her policy commenced in 2001. She mentioned that the second respondent's figure does not correspond with the surrender value she received. She stated that she wants to withdraw from the first respondent because of the declining values each month. She mentioned that she expects to receive the full amount of R41 163.67 as at 23 May 2016.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issue which falls for determination is whether or not the complainant is entitled to the illustrative retirement value of R65 000.00 on her policy.

Benefit on retirement

5.2 The rules of a fund are supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund (See Section 13 of the Act and *Tek Corporation Provident Fund &*

Others v Lorentz [2000] 3 BPLR 227 (SCA) at paragraph [28]). Rule 6.1.5.1 of the first respondent's rules deals with benefits payable on retirement and provides as follows:

> "if, at the MEMBER's retirement, the cumulative value of the MEMBER'S ASSET VALUES under all POLICIES owned by the PLAN in respect of that MEMBER, exceeds an amount of R75 000.00, or such higher amount as the COMMISIONNER may determine, it must be must be used to purchase one or more ANNUITIES in the name of the MEMBER, provided that at the MEMBER'S written request, up to one-third of such amount may be commuted to cash."

In turn, asset value is defined in the first respondent's rules as follows:

> "**ASSET VALUE** in respect of a MEMBER at any time, means the value of a POLICY as determined by the INSURER in accordance with the POLICY PRESCRIPTIONS; provided that, on the happening of a CAUSAL EVENT, the ASSET VALUE means the value of a POLICY as so determined, adjusted for CAUSAL EVENT CHARGES (if any) or, if applicable, as determined in accordance with sub-regulation 5.2(b) of the LTIA REGULATIONS."

Illustrative retirement values

5.3 The complainant stated that she was expecting an illustrative value of R65 000.00 on her policy. The second respondent submitted that the illustrative values using assumed growth rates of 6% and 12% were not guaranteed values. It stated that actual value at maturity will be determined by the actual growth of the underlying investment portfolios. It was stipulated in the policy that the projections are based upon meeting certain assumptions. The second respondent submitted that if the actual value at maturity in any year is less than the assumed rate, then the estimated values will be lower than previously estimated and *vice versa.* Any departure from these assumptions will lead to a change in the illustrative maturity value.

5.4 Illustrative values or maturity values a member may reasonably expect to receive at the maturity date of the policy provided certain assumptions materialise are provided for information purposes only (see *Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others* [2005] 8 BPLR 655 (C)). These projections do not amount to contractual obligations and to the extent that they are fair and reasonable, are not binding on the issuing insurer as they are based on assumptions which may or may not materialise. The assumptions relate to, *inter alia*, the payment of contributions as agreed; the escalation of such contributions (where selected); completion of policy term; the conditions of investment markets throughout the policy term and the inflation rates (see *Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others).*

5.5 To determine whether or not the complainant's fund value was calculated in terms of the first respondent's rules, this Tribunal engaged the services of an independent actuary who provided a detailed transaction history of the complainant's policy from inception to 20 September 2016 and a summary of the policy as follows:

Policy 0028907085	
Gross contributions	R25 200
Policy fees	R-2 016
Contribution charge	R- 990
Guarantee charge	R- 175
Management fee	R- 607
Other adjustments	R 90
Investment return earned	R19 686
Value as at 20 September 2016	**R41 188**

5.6 The actuary mentioned that fees and costs amounted to roughly 15% of gross contributions paid. He further provided this Tribunal with a table of the complainant's returns on contributions as follows:

Returns on contributions

Effective return earned to date on gross contributions	6.59%
Effective return earned to date on net contributions	7.14%
Average inflation over term	5.53%
Real return earned on gross contributions	1.00%
Real return earned on net contributions	1.53%

5.7 The actuary stated that the complainant earned a return of around 7% per annum and positive real returns on both gross and net contributions from inception to 20 September 2016. He confirmed that all due decreases in the policy value during the policy term were due to fluctuating market movements. Negative market movements reduced the unit prices underlying the complainant's investments and subsequently reduced her policy value. He highlighted that negative market movements did not occur often with the majority of market movements being positive over the policy term. The actuary submitted that the main reason for the difference between the theoretical bank value calculated by the complainant and the current value is that the complainant did not take into account any fees or costs. The current policy incurred costs and fees of around 15% of gross contributions made, which were outlined in the policy documentation. He stated that the return assumed in the complainant's calculation was 7.25% per annum whereas actual returns on gross contributions were 6.6% per annum. The comparison between the values is therefore not appropriate. The actuary concluded that the investment value as at 20 September 2016 was not unreasonable and all decreases in the policy value were due to negative market movements.

5.8 In the matter of *Roux v Cadbury Schweppes Pension Fund* [2001] 8 BPLR 2401 (PFA), it was held that whilst there is a duty on pension funds to provide adequate material information to members, there is also a correlative duty on pension fund members to actively seek information and clarify their position before making a significant decision. Therefore, the complainant ought to have monitored the performance of her policy throughout its terms to ensure that it was

yielding the returns she expected. The second respondent submitted that it provides annual update letters urging members to review their investment portfolios to ensure that the portfolio selection is still appropriate, taking into account their current needs. As the complainant stated that she would like to withdraw from the first respondent, she is entitled to a value of R41 188.00 as at 20 September 2016. Therefore, the complainant may not hold the respondents liable to pay her a retirement benefit equal in amount to the illustrative value.

5.9 As a result this Tribunal concludes that the decrease in the complainant's fund value was not due to the fault on the part of the first respondent, however was due to the negative market performance. The first respondent acted according to the mandate of the portfolios in which the complainant has chosen to invest. This Tribunal would like to highlight that there are fees and costs that are deducted from the complainant's fund value in terms of the first respondent's rules as compared to the value of an investment in a bank. Therefore, it is not appropriate to compare the two values. The complainant has failed to establish before this Tribunal that she is entitled to the relief that she seeks (see *Pillay v Krishna* 1946 AD 946 at 951).

[6] <u>ORDER</u>

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

DATED AT PRETORIA ON THIS 17TH DAY OF OCTOBER 2016

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MA LUKHAIMANE

PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented