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The PFA paints a poor TCF picture of the retirement industry

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25 June 2014 Jonathan Faurie

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Treating Customers Fairly (TCF) is a principle's based approach to the Financial Services Industry and regulates how product providers should be treating customers. The principles have been in place since the beginning of the year, and despite the fact that the principles have not been formalised in legislation, the Financial Services Board (FSB) is expecting all companies to adhere to these principles.

But are these principles making the desired impact on improving the industry? We are six months into the year and we can surely have a good indication if this is the case. The Office of the Pension Funds Adjudicator (PFA) reports that TCF principles in their current form are not working in the retirement sector. This comes after two determinations handed down by the PFA. Muvhango Lukhaimane, the Pension Funds Adjudicator, has called on the FSB to entrench the TCF principles into legislation so that the industry can get a sense of where it stands.

The case of the excessive management fee

After receiving complaints regarding excessive management fees, the PFA asked the Lifestyle Retirement Annuity Fund (first respondent) and the Liberty Group (second respondent) to produce the PFA with a breakdown on the management fees levied on a complainants investment.

A Ms E Herzfeld (complainant) alleged that maladministration on the part of the respondents resulted in the poor performance of her investment. The complainant paid an upfront contribution of R22 329.19 in 1996 and as at October 2013, this investment had grown to R44 173.00, a return of R21 843.81 over 17 years. She labelled excessive fees imposed by the respondents as the reason that the investment performed so poorly.

The respondents denied this allegation and said that it was poor investment choices made by the complainant, which was the cause of the performance of her investment. The respondents also proved that they only imposed a 1% investment guarantee charge at the beginning of the investment. The respondents also charged a 1% monthly management fee which is normal practice in the retirement industry.

The complainant invested in three portfolios. One of the portfolios selected by the complainant had negative returns over a four year investment period, while another investment had a performance of 4.83% over a 13 year period. The third portfolio had a return of 12.90% over a period of two years. The respondents were in constant contact with the complainant and briefed her on an annual basis on the performance of each portfolio. The complainant was also informed of the option to switch to profiles which suited her risk profile. She exercised this risk twice.

“The complainant was reminded that when one decides to invest in the markets, more so when the member has a choice to elect where her funds should be invested, she should be ready to bear any positive and negative returns inherent in the swing of the markets," said Lukhaimane.

The PFA must have gone back to the Record of Advice to see whether the respondents did consult with the complainant on the performance of her investment. The question is, was the consultations conducted in a way that the complainant clearly understood that it was her choice of investments, and not excessive fees, which caused the poor performance of her investment.

This complaint applies to the third principle of TCF which states that customers should be given clear information and are kept appropriately informed before, during and after the time of contracting.

The issue that simply won’t disappear

The third principle of TCF was also the basis of another determination which was brought to the attention of the office of the PFA. Causal event charges has been an issue in the industry for a number of years, and it is an issue which does not look like it is going to disappear any time soon.

Mr P Ramjith, the complainant of a case which was being looked into by the PFA, was a member of the same retirement fund which involved the two respondents in the Herzfeld case. The complainant said that when he received a quote from the Liberty Group (the second respondent) for an early exit on his retirement annuity, he was informed that a 22% penalty on his investment would be levied if he decided to transfer his funds to another institution.

The complainant's investment was R219 606,97 which was reduced to R171 293,44 after causal event charges of R48 313,53 were imposed. The complainant thought that this was harsh because he voluntarily increased his premiums over the years from the original R150 p/m to R5 808 p/m. The complainant argued that if he had continued with the original investment premiums, he would be paying R326 p/m which meant that his investment would have been less, and in turn his penalties would have been less.

But the PFA ruled that the deduction of 22% was within the rights of the second respondent and the PFA was happy that this was communicated to him. "In deducting the 22% from the complainant's fund value, 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 Long-Term Insurance Act and the regulations," said Lukhaimane.

Again, this applies to the third principle of TCF. Did the second respondent give the complainant a clear enough indication that despite the voluntary increases in premiums, a 22% causal event charge would be levied?

Making the industry accountable

We know that the FSB is expecting companies to adhere to TCF principles even if TCF is not entrenched in law. **It is now time for the FSB to look at companies and what their approach to TCF is.** Are they adopting a tick box approach or are they making a concerted effort to adhere to the principles outlined by the FSB?

The cases above are prime examples of this. While it will be easy to determine if the necessary communication took place between the complainants and the respondents. The question is, was it done in a clear and understandable manner? Perhaps we need to relook at the way we record and give advice in order to show that we have communicated all aspects of a product clearly to a customer.

Lukhaimane points out that most retirement annuity products fail four out of the six TCF principles in that the products and services sold are not designed to meet the specific needs of customers. This is especially true with causal event charges where clients are handed down harsh penalties even if they are cancelling their policy because they have fallen on hard times.

This is definitely something that the FSB needs to look at and resolve as a matter of urgency if it wants to portray TCF as a success before it is passed as law after the adoption of Twin Peaks.

If there is a case whereby a company does not live up to any TCF principles, then the FSB must descend down on them swiftly and harshly. As pointed out by Norton Rose Fulbright Director, Christine Rodrigues, even without TCF being entrenched in law, the FSB has currently got enough protection under the constitution to impose punitive measures on companies.

http://www.fanews.co.za/article/compliance-regulatory/2/pfa-pension-fund-adjudicator/1026/the-pfa-paints-a-poor-tcf-picture-of-the-retirement-industry/16268