
White knight for wronged pensioners

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Cape Town - What do you do if the administrator of a pension fund fails to do what it promised to, and you are disadvantaged by their actions? There is hope in the form of the Pensions Fund Adjudicator.

That is what Ms C E McDonnell found out. She complained to the adjudicator that penalty charges were levied on her retirement annuity when she made her policy paid up, despite Liberty Life giving her a prior undertaking that no penalties would be charged if she terminated.

The adjudicator, Muvhango Lukhaimane, ordered Liberty Life to pay into the complainant's paid-up retirement annuity policy all termination and casual event charges levied on her fund's value.

Liberty argued that they were entitled to recoup certain expenses, and the adjudicator agreed with that, but ruled that there was clear evidence that the complainant was told that there would be no termination charges if she made her policy paid up, and she was clearly disadvantaged by the respondent's negligent misrepresentation.

McDonnell, with the assistance of her financial adviser, approached Liberty's Lifestyle Retirement Annuity Fund in May 2011 to enquire if there would be penalties if she were to make her retirement annuity paid up, or if she were to transfer it to another fund. The respondents informed her that no penalties would be charged.

Relying on this response, McDonnell sent a letter indicating that she was making her retirement annuity policy paid up and that the respondents should cease deducting premiums from her account.

The respondents failed to cancel this policy and continued to receive premiums from McDonnell via a stop order, until January 2013 when she discovered the mistake.

When she instructed the respondents again to terminate the policy, Liberty effected termination penalties that reduced the fund value.

The charges reduced the investment value of R80 112.32 with R16 758.92 (20.92%) to only R63 353.40.

Liberty admitted that in response to enquiries made by McDonnell, it had confirmed that "there is no penalty for making the policy paid up". It also admitted that due to an administrative error on its part, the policy was only made paid up on the second instruction.

Liberty then offered the complainant an amount of R2 000 for poor service, but this was rejected.

Liberty argued that the indication that there would be no penalty charges only referred to surrender penalties, and not to the deduction of unrecovered expenses. It submits that this was in line with its policy document.

Lukhaimane however determined that Liberty was being “disingenuous” in its explanation of what was “an unequivocal statement” to the complainant that no penalties were payable.

Lukhaimane said she was satisfied that charges sought to be levied by the respondents (including charges for marketing, distribution and acquisition costs) were within the law.

“However, regardless of the fact that the respondents were allowed to deduct these penalties from the complainant’s fund value, this did not address the negligent misrepresentation made to McDonnell that no penalties were payable if the complainant was to cease paying contributions. ’

Liberty was therefore ordered to pay back all termination and casual event charges levied on her fund’s value.