

THE FINANCIAL SECTOR CONDUCT AUTHORITY

CASE NO:14/2019

CHANNEL LIFE LIMITED

(1969/ 012487/06)

ORDER IN TERMS OF SECTION 167 OF THE FINANCIAL SECTOR REGULATION ACT NO.9 OF 2017 IMPOSING AN ADMINISTRATIVE PENALTY ON CHANNEL LIFE LIMITED

1. Introduction

- 1.1. The Financial Sector Conduct Authority (the Authority) is a juristic person established in terms of section 56 of the Financial Sector Regulation Act, No.9 of 2017 (the FSR Act). The functions of the Authority are *inter alia* to regulate and supervise the conduct of financial institutions in accordance with financial sector laws.
- 1.2. Channel Life Limited (Channel Life) is a financial institution as defined in section 1 of the FSR Act and is authorised as a long-term insurer in terms of the Long- Term Insurance Act, 52 of 1998 (the LTIA). Channel Life is also a Financial Services Provider, with **FSP license number; 19243**.
- 1.3. The Authority detected contraventions of the LTIA, the Policyholder Protection Rules and of the Financial Advisory and Intermediary Services Act, 37 of 2002 (the FAIS Act) during a market conduct on-site visit on Channel Life Limited (Channel Life).
- 1.4. The Authority has considered the findings of the on-site visit and Channel Life's submissions and records herein its findings as well as the administrative sanctions it imposes on Channel Life.

2. The breaches of Rule 5.1 (a) (i) of the Policyholder Protection Rules read with section 7 (3), 13 (2) (b) and 13 (3) of FAIS



- 2.1. Channel Life concluded agreements with 168 persons (referred to as runners) who collected insurance premiums on its behalf. At all relevant times herein, the runners were not registered as representatives of Channel Life as required by the FAIS Act.
- 2.2. In the circumstances, Channel Life conducted financial services business with persons who were not lawfully authorised in terms of the FAIS Act thus breaching section 7 (3) of the FAIS Act. Channel Life also breached section 13 (3) of the FAIS Act which required it to maintain a register of its representatives which must be updated from time to time as well as section 13 (2) (b) of the FAIS Act which required Channel Life to ensure its representatives complied with applicable codes of conduct and laws on conduct of business.
- 2.3. The agreements between Channel Life and the runners were not compliant with rule 5 (1) (a) (i) of the Policyholder Protection Rules which required such agreements to be concluded with intermediaries that have been authorised in terms of the FAIS Act.
- 2.4. In its defence, Channel Life argued that the runners (when collecting premiums) performed a mechanical service and were thus excluded from the definition of representative as explained in Guidance Note: Intermediary Services and Representatives (Revised 12/01/2011). The Guidance Note reads as follows:
- “Thus a person who, for example performs a “mechanical” service by merely handing over a proposal form to a client, who takes receipt of a claim from a client, without applying any judgement process in relation to that interaction, is intended to be excluded as a representative. However, this does not mean an intermediary service is not being rendered.”*
- 2.5. The Authority rejects Channel Life’s argument and finds that the runners performed intermediary services as defined in the FAIS Act and should have been registered as representatives in terms of the provisions of the FAIS Act.
- 3. Administrative Penalty of Rule 5.1 (a) (i) of the Policyholder Protection Rules read with section 7 (3), 13 (2) (b) and 13 (3) of the FAIS Act**

- 3.1. After due consideration of the relevant factors set out in section 167 (1) and (2) of the FSR Act, including submissions made by Channel Life, the Authority hereby imposes an administrative penalty of **R250 000 (two hundred and fifty thousand rand inclusive of costs)** on Channel Life for the abovementioned contraventions. The administrative penalty is payable within 30 days of the date of this order.
- 3.2. In arriving at the amount of the administrative penalty, the Authority *inter alia* considered the following:
 - 3.2.1. The contraventions occurred over a period of 4 years. During this period the runners collected R6.4 million in premiums.
 - 3.2.2. The Authority believes that Channel Life's conduct had the potential of poor outcomes for clients in that 168 persons who were not appointed nor trained in respect of the requirements under the FAIS Act handled clients' funds.
 - 3.2.3. The Authority considered that Channel Life cooperated during the enforcement process as well as the fact that Channel Life has since ceased using the runners for premium collection.
 - 3.2.4. Channel Life has previously been fined for failing to comply with a financial sector law.

4. The breach of section 53 (2) of the LTIA

- 4.1. During the period from 2009 to 2017 Channel Life failed to pay 33 policy holders monetary amounts equal to the value of their policy benefits.
 - 4.1.1. Channel Life believed it complied with the provisions of section 53 (2) of the LTIA when it paid the aforesaid policy holders amounts Channel Life claimed were equal to the costs of rendering the funeral services covered under the relevant policies.
 - 4.1.2. The Authority disagree with Channel Life's interpretation especially because the amounts paid by Channel Life to the policyholders were significantly less than the values ascribed by Channel Life to the relevant policy benefits.



5. Administrative Penalty in respect of the breach of section 53 (2) of the LTIA

- 5.1. After due consideration of the relevant factors set out in section 167 (1) and (2) of the FSR Act, including submissions made by Channel Life; the Authority hereby imposes an administrative penalty of **R300 000 (three hundred thousand rand)** on Channel Life for the contravention. The administrative penalty is payable within 30 days of the date of this order.
- 5.2. In arriving at the amount of the administrative penalty, the Authority *inter alia* considered the following:
- 5.2.1. Upon engagements with the Authority, Channel Life accepted the Authority's interpretation and undertook to amend its policy wording in line with the applicable provisions.
- 5.2.2. Channel Life cooperated with the Authority including agreeing to comply with a directive in terms of section 144 of the FSR Act to pay the affected policy holders the difference between the actual payments already made to clients and the values of the policy benefits to ensure that the amounts paid are in line with the requirements of section 53 (2) of the LTIA.
- 5.2.3. Collectively, in respect of the 33 policyholders these amounts are estimated to not exceed R100 000.

6. Channel Life is required to further take note:

- 6.1. If Channel Life fails to pay the administrative penalty within the period prescribed by this order, in terms of section 169 of the FSR Act, interest, at the rate prescribed in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), will be payable in respect of any unpaid portion of the administrative penalty until it is fully paid.
- 6.2. Failure to comply with this order will result in the provisions of section 170 of the FSR Act being invoked, which provides that:

“(1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if: -

(a) the amount payable in terms of the order has not been paid as required by the order; and

(b) either: -

(i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal’s decision, has been lodged by the end of the period for making such applications; or

(ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.”

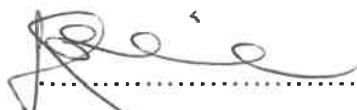
6.3. In terms of section 230 of the FSR Act a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal (the Tribunal). An application for reconsideration must be made –

6.3.1. in accordance with the Tribunal rules; and

6.3.2. within the time periods set out in section 230(2) of the FSR Act.

You may contact the secretary of the Tribunal at (012) 428 8012 or per electronic mail at LEG.Tribunal@fsca.co.za.

Signed at Pretoria on 5 November 2019



**MS KEDIBONE DIKOKWE
FOR THE AUTHORITY.**