Financial Services Tribunal

**THE FINANCIAL SERVICES TRIBUNAL**

**Case No: PFA88/2025**

In the matter between:

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| **KEVIN MICHAEL LEON** | Applicant |
| and | |
| **LIBERTY GROUP LIMITED** | First Respondent |
| **THE PENSION FUNDS ADJUDICATOR** | Second Respondent |
| **LIFESTYLE RETIREMENT ANNUITY FUND** | Third Respondent |

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**Tribunal panel:** G Goedhart SC (chairperson), P Maseko and PR Long

**Date of hearing:** 6 August 2026

**Date of decision:** 12 August 2026

**Summary:** *Reconsideration in terms of s 230 of the Financial Sector Regulation Act 9 of 2017 – determination of the Pension Funds Adjudicator under s 30M of the Pension Funds Act 24 of 1956 – retirement annuity – alleged guarantee of a retirement benefit – policies providing that the benefit is the investment value at retirement, with no provision for a guarantee – recorded retirement date corrected and of no consequence – application dismissed.*

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**DECISION**

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## INTRODUCTION

1. The applicant is a member of the third respondent, the Lifestyle Retirement Annuity Fund ("the fund"), a retirement annuity fund registered in terms of the Pension Funds Act 24 of 1956 ("the PFA"). The first respondent, Liberty Group Limited ("Liberty"), is the administrator of the fund and the underwriting insurer of the fund member policies issued for the applicant's benefit.

2. The applicant applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") for the reconsideration of a determination of the Pension Funds Adjudicator ("the Adjudicator") dated 7 October 2025, made in terms of s 30M of the PFA. Liberty and the fund oppose the application; the Adjudicator filed the record and took no further part.

3. The application was heard on 6 August 2026. The applicant appeared in person; the first and third respondents were represented by Mr Shaqeel Eckersley. The application for reconsideration proceeds on the record before the Adjudicator and the parties' submissions.

## FACTUAL BACKGROUND

4. The applicant became a member of the fund on 1 July 2013, when policy 005****404 ("the first policy"), a Retirement Annuity Builder product, was issued by the fund for his benefit. Its summary records an issue date of 2 July 2013, a selected retirement date of 1 July 2027 (selected retirement age "65 next

birthday") and a premium of R500 per month, allocated to a single portfolio, the LA Excel Mod Cons.

5. Two provisions of the first policy matter for present purposes:

   5.1 Clause 1 of the terms and conditions ("Benefits at retirement") provides: "*Retirement from the Fund takes place on the Selected Retirement Date unless the Member elects to retire on a different date. The Member may elect to retire and start receiving benefits at any age after 55. The benefit on retirement is the Investment Value on the date the Member actually retires from the Fund, subject to any Investment Performance Guarantee*."

   5.2 Clause 5 ("Investment Performance Guarantees"), the "fifth anniversary clause" on which the applicant relies, provides that "[*c*]*ertain Investment Performance Guarantees may apply in order to determine the minimum benefits payable on the fifth policy anniversary",* but only *"[i]f any portfolio offering an Investment Performance Guarantee has been chosen*", in which event "*guarantee charges will be deducted*".

6. The applicant chose no such portfolio and paid no guarantee charges. Against the only portfolio selected, the policy summary records under "*Investment performance guarantee at 01 July 2018*": "<u>*No guarantee*</u>".

7. The contemporaneous record of advice reflects that on the same day the applicant accepted life cover of R1 500 000 under a separate Lifestyle Protector policy, a "[*r*]*isk only benefit with no investment component"* which *"pays a lump sum on death*". While, of the Retirement Annuity Builder, it records: "*Performance of the portfolio affects the value of the contract*."

8. In late 2023 the applicant reviewed the first policy with his financial adviser. On 23 October 2023 he signed a switch form authorising the transfer of his investment to the Liberty Retirement Annuity product range. The record of advice of 25 November 2023 motivates the switch as offering a "[*l*]*ower cost structure and more value for Mr. Leon*". The replacement advice record warned that "[*y*]*our new policy may not have the same investment performance guarantees as the existing policy (if applicable)*".

9. Policy 007****360 ("the second policy") commenced on 9 February 2024 by an internal transfer of R526 594.76 from the first policy. Its terms and conditions are to the same effect: "*Retirement from the Fund takes place on the selected retirement date unless the Member elects to retire on a different date. The Member may elect to retire and start receiving benefits at any age from 55. The retirement benefit is the Investment Value on the date the Member elects to retire from the Fund, less any applicable tax*."

10. On migration Liberty erroneously captured a selected retirement age of 70, and the first investment summary accordingly reflected a retirement date of 30 June 2033. When raised, the error was corrected to age 65, the recorded date being

31 July 2028, after the applicant's sixty-fifth birthday. Each investment summary of the second policy records the entire value under "*Portfolios with no guarantee*" and, against "*Portfolios with a guarantee*", the amount "*R0.00*". The policy's value was R620 322.82 as at 27 March 2025 and R766 279.25 as at 28 July 2025.

**THE COMPLAINT AND THE DETERMINATION**

11. The applicant lodged his complaint on 7 March 2025. The first policy, he said, was moved to the second "*for a better performance*", but "[*t*]*hey have failed to confirm the promised guarantees of policy 005****404 and they keep changing the inception and retirement dates which was originally 1/7/2027*"; nor was he given a copy of the original policy. The outcome sought was the "[*s*]*ame guarantees of original policy 005****404 of 1/7/2013 with additional benefits of new policy. They must also confirm and honor the original retirement date of 1/7/2027*".

12. Liberty responded for itself and the fund. It explained and corrected the capturing error; pointed out that the recorded date does not limit when the applicant, being over 55, may retire; and stated: "*It is important to note that neither the original policy (005****404) nor the new policy (007***360) provides guarantees regarding the final retirement value*." Its call recording of 6 June 2023 reflects that the applicant's request that day was to change the financial adviser on record, "*with no mention of a guarantee-related complaint on the policies*".

13. The Adjudicator identified the issues as "*whether the fund failed to confirm the promised guaranteed returns on the second policy and whether it was entitled to change the retirement date on the second policy*". Analysing both policies, the "*No guarantee*" entry in the first policy's summary and the definitions of investment value in both, she concluded that "*there is no indication that the policies had a guaranteed vesting value*"; the benefit "*is not guaranteed and will fluctuate from time to time depending on the market volatility performance*".

14. The Adjudicator considered the fund rules. Rule 6.1.4.1 requires the member's retirement interest exceeding R75 000 at first retirement to be applied "*to purchase one or more ANNUITIES in the name of the MEMBER*", not more than one-third being commutable for cash; "*RETIREMENT INTEREST*" is "*the sum of the ASSET VALUES of all POLICIES owned by the PLAN in respect of the MEMBER on the date at which the MEMBER first retires from the PLAN*". Upon retirement, she held, the applicant is entitled to the value of his policy: "*there is no guaranteed vesting amount in terms of the policies*".

15. As to the retirement date, the Adjudicator noted that "*Normal Retirement Age*" is defined in the rules as "*the date on which a MEMBER attains 55 years of age*"; that the applicant is over 55; and that he "*may retire at any time, and no penalties will be levied on his policy*". Whether the second policy reflected 31 July 2028 instead of 1 July 2027 accordingly "*has no legal consequences*". She nonetheless ordered the fund "*to amend the second policy to reflect the complainant's retirement date of 1 July 2027, within two weeks of this determination*".

## THE GROUNDS OF RECONSIDERATION

16. The grounds annexed to the application, as amplified in the applicant's emails of 18 November 2025 and 27 January 2026, can be summarised as follows:

16.1 during a call to Liberty on 6 June 2023 a call-centre agent, "*reading from online profile of policy status*", confirmed a guarantee on the first policy, "*inline with policy 5th anniversary review*", and Liberty failed to provide him with the recording or a transcript;

16.2 Liberty holds the transcript, the online profile and a "*copy of 2017 letter*" on its system, yet cannot produce the original signed policy of 2013 "*which would have original terms and conditions*", and the first policy can no longer be viewed on the applicant's online profile;

16.3 the second policy was concluded on the footing that it was "[*o*]*nly a switch*", preserving the inception date of 1 July 2013 and the retirement date of 1 July 2027, whereas it has borne "*2x inception dates 3x preferred retirement dates*"; and

16.4 the Adjudicator never referred to the transcript, failed to determine the inception date, and could not "*use new policy terms and conditions, to determine old policy terms and conditions, without original policy*".

17. In his augmented grounds the applicant records: "*It is inconceivable, that call centre agent, would state that amount on policy is guaranteed and repeat a few times, while reading from online profile, after confirming details of correct policyholder.*" He linked the alleged guarantee to the fifth anniversary clause, "*which coincidences with notification of guarantee in 2017*", and reserved the right to submit the 2017 letter "*once found with tax papers*". It was never submitted.

18. At the hearing the applicant conceded, correctly and for the reasons below, that neither policy provides for a guarantee. He nevertheless maintained that during the call of 6 June 2023 a consultant of Liberty informed him that the policy in fact guaranteed a payout of R1.5 million upon retirement, and that an annual policy update received from Liberty during 2017, in the form of a letter addressed to him, confirmed the guarantee.

**THE CALL RECORDING AND THE 2017 POLICY UPDATE**

19. The complaint that Liberty withheld the recording is not borne out by the record. On 27 June 2025 Liberty informed the applicant that "*none of the calls made before or after 6 June 2023 include reference to a guaranteed amount associated with policy number 005****404*"; that the recordings were available and transcripts could be arranged upon his confirmation; and it asked which of its offices would suit him for access. Its submissions to the Tribunal confirmed that the recording was provided to the applicant's attorney and made available for inspection at its Braamfontein office.

20. At the hearing before the Tribunal Liberty confirmed that the recording had been provided to the applicant's then legal representatives as early as 13 September 2024, and again tendered to make it available to him at its Braamfontein offices. Liberty confirmed that the recording makes no mention of any guarantee. It likewise tendered to provide the applicant with the 2017 policy update which, it confirmed, also makes no mention of a guarantee. The applicant has thus had access to the recording since September 2024 at the latest; every facility to verify its content has been extended to him, and he has taken up none of the tenders.

**EVALUATION**

21. The applicant bore the burden of establishing the guarantee on which his complaint rested. The enquiry begins, and in this case ends, with the contractual instruments: the fund member policies read with the rules, which, both policies declare, prevail in the event of discrepancy. A fund may act only in terms of its rules; a benefit which neither the rules nor the policies issued under them provide cannot be claimed from it.

22. Neither policy contains a guarantee:

22.1 under the first policy the retirement benefit is the investment value at the date of actual retirement, "*subject to any Investment Performance Guarantee*", a qualification operative only if a guaranteed portfolio was chosen and paid for. None was: the summary records "*No guarantee*" as at the fifth anniversary of 1 July 2018, the very anniversary the applicant invokes;

22.2 under the second policy the retirement benefit is the investment value on the date the member elects to retire, and every investment summary records "*Portfolios with a guarantee: R0.00*"; and

22.3 under the rules the benefit on retirement is constituted by the retirement interest (the sum of the asset values of the member's policies at first retirement) to be applied in the purchase of annuities, subject to the one-third commutation. No rule guarantees any amount.

23. The concession at the hearing was therefore unavoidable, and it is dispositive of the complaint as formulated. The applicant asked the Adjudicator, and now this Tribunal, to "*confirm*" guarantees that he concedes are not provided for in neither the first nor second policies.

24. The alleged telephonic guarantee cannot fill that void:

24.1 the claim is contradicted by the record. Liberty's review of its recordings found no reference to a guaranteed amount in any call; its uncontradicted account of the call of 6 June 2023 is that the applicant phoned to change the financial adviser on record; and its confirmation at the hearing was that the recording contains no mention of a guarantee.

The applicant, who has had the means of gainsaying that confirmation since September 2024, has not done so;

24.2 even on the applicant's own version the agent was "*reading from online profile of policy status*", a profile of the very policy whose summary records "*No guarantee*". A call-centre agent's remark cannot amend a policy, still less the rules, nor bind the fund to pay a benefit its rules do not provide for. The applicant's entitlement falls to be determined from the written instruments, as the Adjudicator approached it; and

24.3 The only reference to R1.5 million in the record is the R1 500 000 life cover accepted by the applicant under the separate Lifestyle Protector policy signed the same day as the first policy, a risk-only benefit, payable on death, with no investment component.

25. What the record excludes is a guaranteed retirement payout of that, or any, amount under either policy.

26. The 2017 policy update takes the matter no further. It is not in the record. The applicant, despite his reservation, never produced it and Liberty, which tendered it at the hearing, confirmed that it makes no mention of a guarantee. The contention is in any event irreconcilable with the contemporaneous policy summary recording "*No guarantee*" as at 1 July 2018, the anniversary to which the alleged 2017 "*notification*" is said to relate. The annual update that is in the record, dated 2 June 2023, notifies a premium increase and says nothing of a

guarantee, and Liberty's statements expressly disclaim what the applicant asserts: "*No guarantee of values is expressed or implied*." In any event, unilateral correspondence could not confer a benefit for which neither the policies nor the rules provide.

27. The altered retirement dates, of which the applicant makes much, had no real impact on his retirement:

27.1 the capture of age 70 on migration, briefly reflected as a retirement date of 30 June 2033, was an admitted error, corrected to age 65 (31 July 2028) when raised;

27.2 the recorded date is not a straitjacket. Under both policies the applicant "*may elect to retire and start receiving benefits at any age*" after (or from) age 55, and "*Normal Retirement Age*" under the rules is age 55. The applicant is well past that age. He may retire on 1 July 2027, or on any other date of his choosing and, as the Adjudicator found, "*he may retire at any time, and no penalties will be levied on his policy*". His fear of a deemed early retirement is without foundation;

27.3 nor does the recorded date affect the quantum: whenever the applicant retires, the benefit is the investment value at that date. There is no guaranteed sum maturing on a stated date which an alteration of that date could forfeit;

27.4 in any event the Adjudicator ordered the fund to amend the second policy to reflect 1 July 2027. The applicant thus obtained the very relief he sought, and the respondents record that the amendment has been effected;

27.5 the complaint about the inception dates is inconsequential: the summaries of the second policy record both the original commencement date of 1 July 2013 and the internal transfer date of 9 February 2024; his membership since 2013, and the value transferred, are preserved.

28. The remaining grounds require little elaboration. The contention that the Adjudicator determined the first policy's terms from the second's is simply wrong: the determination quotes the first policy's own summary and terms and conditions, in the record under Liberty's letter of 2 July 2013. The belief that a different "*original*" 2013 policy exists, containing a guarantee clause, finds no support in the papers. The first policy is no longer visible on the applicant's online profile because it was replaced, at his instance, by the second.

29. The Adjudicator's findings accord with the policy documents and the rules of the fund. She correctly held that the policies contain no guaranteed vesting value, a proposition the applicant now concedes, and that the recorded retirement date has no legal consequence for his entitlements, while nevertheless affording him practical relief in respect of the date. No misdirection has been shown, and none of the grounds of reconsideration has

any merit. There is therefore no basis for this Tribunal to interfere with the decision of the Adjudicator.

**ORDER**

30. In the result the following order is made:

a) the application for reconsideration is dismissed.

Signed on behalf of the Tribunal on this the 12th day of August 2026.

__*Sgd Adv PR Long*_____

**PR Long**
(With the Tribunal panel members concurring)