

## Policyholder protection rules : The impact on Boards of Trustees

The recently amended Policyholder Protection Rules (PPR's), which are aligned to the Financial Sector Conduct Authority's Treating Customers Fairly (TCF) outcomes, will continue to provide operational compliance challenges for group risk insurers. While the PPR's only refer to achieving objectives in a manner that is reasonably practicable in the normal course of business, there is no guidance on how this should be accomplished where both the insurer and the fund is responsible for the same treatment and outcome to members. According to Michele Jennings, Chief Executive Officer of Sanlam Employee Benefits: Group Risk, the PPR's has far reaching implications for employers, brokers, members, beneficiaries and quite significantly for funds managed by boards of trustees.

Risk benefits which are linked to a retirement fund are provided and underwritten by insurers with the delivery to members coordinated by trustee boards in terms of the rules of a fund. The trustees have a fiduciary responsibility and the insurer has a contractual relationship to provide members with products that are aligned to TCF.

Given this scenario, how do these obligations for each party, dovetail with each other and who will ultimately be more at risk if the fair treatment of members is not complied with, and/or whose legal obligations are more significant in terms of differing pieces of legislation.

### 1. The role of Fund

According to the Pension Funds Act (No 24 of 1956) [PFA] a fund must operate as a separate legal entity, managed by a board of trustees. The board is responsible for the management of the fund including the assets, administration and risk benefits such as death and disability benefits.

Trustees must direct, control, oversee and act with due care and diligence and do so in good faith, while avoiding conflict of interests and acting with impartiality. Together with applicable laws and registered fund rules, the board of trustees has a fiduciary responsibility to be accountable to and act in the best interests of members and beneficiaries and take all reasonable steps to ensure these interests are protected.

As one of their main duties, they ensure adequate and appropriate information is communicated to members informing them of their rights, benefits and duties. They must also determine the allocation of death benefits and all their responsibilities must comply with all applicable laws.

Trustees should, however, also appreciate the regulatory obligations of the insurer who administers the risk benefit product, who in terms of the PPR's have very specific disclosure requirements which includes direct communication of pertinent information to members.

### 2. The role of Insurer

The insurer aims to provide a financial solution for commercial value that provides the best possible value to fund members and their families via fund contributions made by the employer and or member into the fund. This includes retirement and risk benefits. The insurer must act with due skill, care and diligence towards policyholders (the fund) and members (fund members), while ensuring TCF's fair treatment requirements are met.

In terms of the PPR's, the insurer must directly communicate important aspects of the policies with the policyholders. In this regard it can be reiterated that a fund as well as a member of a fund is also defined as a policyholder in the PPR and the insurer must therefore communicate with the individual members of the fund or scheme.

When it is demonstrated to the Regulator that this is not practicable, the insurer may enter into an arrangement to facilitate and support the provision of specific information via the fund, to members, before, during and after inception of the policy. Where the insurer relies on the fund to deliver this communication, the insurer remains responsible for ensuring compliance with the PPR's requirements and the monitoring thereof.

Given the aligned objectives, it would make sense that the stakeholders (the insurer and the boards of trustees) engage in a symbiotic and co-operative relationship, (one that is unified in understanding and appreciation of what is required of the other and then conduct themselves in a manner that is reasonable and practicable). This is especially relevant in the context of enhancing transparency and discipline in the industry where all stakeholders wish to ensure ethics, corporate responsibility, sustainability, and social and financial security.

It would therefore benefit both parties if there is continued dialogue as the insurer must deliver on the member obligations in terms of PPR and the trustees must guarantee the member promise in terms of the fund rules.

### **How will boards make decisions?**

- ⌚ Where board members may lack sufficient expertise, boards will need to obtain expert advice (including regulatory matters), but they still remain responsible for all board decisions;
- ⌚ In order to act in the best interests of members and beneficiaries, board members must attain appropriate levels of skill and competency and should receive comprehensive training on legislative and regulatory frameworks (including insurance frameworks such as TCF, PPR and PFA) and applicable governance principles. Board members should acquire and maintain an understanding of risk management, benefit structures, legal issues, regulatory and compliance requirements, taxation, actuarial and retirement reform issues;
- ⌚ Clear identification and assignment of operational responsibilities must be established, e.g. an independent channel of communication must be involved between the insurer and the fund with designated roles identified; and
- ⌚ Boards of trustees must make decisions by ensuring accountability, fairness and transparency in its relationship with all its stakeholders according to PF Circular 130.

### **Fund communication challenges vis a vis Insurer obligations**

The fund, through the board, should ensure that adequate and appropriate information is communicated to the members and beneficiaries informing them of their rights, benefits and duties in terms of the fund rules. The fund must apply PF Circular 86 aimed at improving communication between funds and members which should include pertinent information in explanatory pamphlet form and/or benefit statements.

In terms of the PPR's the insurer is ultimately responsible for the provision of specific policy information to policyholders, and where it is not reasonably practicable for the insurer to do so, it may facilitate and support the provision of such information to funds for them to disclose to the member.

In this scenario, the fund applies its communications policy for the disclosure of minimum fund information to members and beneficiaries, whereby information must be informative, transparent and fair, and display accountability. This communication policy probably already includes among other things, changes to rules of the fund, important changes to regulatory requirements, or deviations from policies and rules as well as the name and contact details of the administrator; and now should also include the required insurance policy disclosures prescribed in the PPR's, as well as the mediums to be used for these communications, and how the evidence of these communications will be provided to the insurer.

An independent channel of communication must be established between the insurer and the fund, where the chairperson of the board or the principal officer of the fund is designated as the go to person for claims, complaints and disclosure of information. The insurer and fund formally contracts that the fund communicates with members on the insurer's behalf, and the board gains member consent to communicate through the fund for claim and medical underwriting events, as the PPR requires direct communication between insurer and members, unless the members consents otherwise.

In order to achieve these objectives and manage emerging challenges, a registered fund may make amendments to its fund rules. This may be required to achieve what is reasonable and practicable in the normal course of business. Simultaneously the insurer should work co-operatively towards fair treatment and outcomes for members and facilitate and support the provision of identified information to its fund stakeholder, before, during and after policy inception.

Warm regards

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