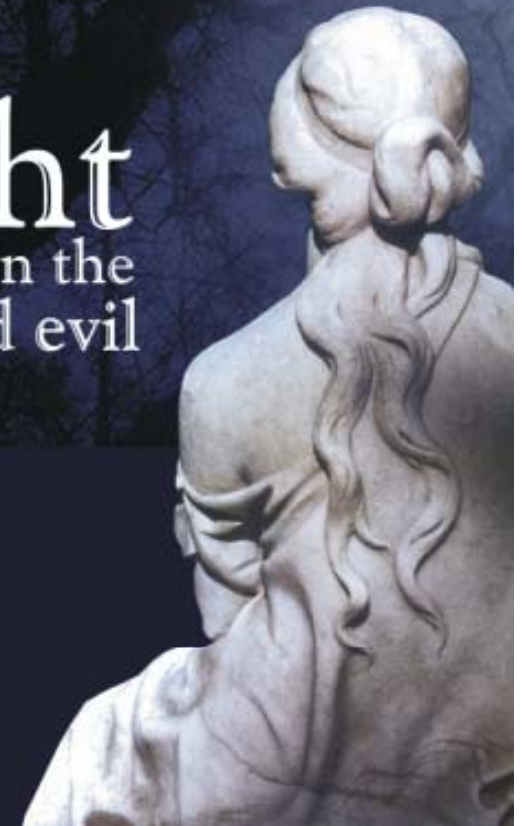


Conciliation & Mediation in  
the Pension Fund  
environment

Midnight  
in the  
garden of good and evil

**Wahida Parker – CEO Equillore Ltd**



# CREDENTIALS

- Wahida is:
  - a trustee of one of the largest umbrella funds
  - CEO of the largest and oldest commercial ADR service provider in RSA
  - An admitted attorney

*“There are three ways of dealing with difference: domination, compromise and integration. By domination only one side gets what it wants; By compromise neither side gets what it wants; By integration we find a way by which both parties may get what they wish”*

**Mary Parker Follett**

- **Theme:** Not every claim is a dispute



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# BACKGROUND

- During the initial establishment of the office of the PFA, the Mouton commission found conflicting views:
  - That the ombudsman should operate as a special court and that the decisions should be bindingvs.
  - That the ombudsman should fulfill a mediatory and conciliatory role, and that the decisions should not be binding
- A structure was opted for that brought a compromise between these two by allowing an appeal process



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# THE ACT SAYS

- Section 30A(2) of the Pension Funds Act provides that where a complainant has lodged a complaint with a fund:

*“the complaint.... shall be properly considered and replied to in writing by the fund... within 30 days of receipt thereof.”*

## Risks are issues that were left unattended

- Not all complaints are disputes
  - Proper response in good time
  - Maintain proper communication
  - Complaints must be qualified internally to ensure that only disputes are referred



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## THE PFA SAYS:

- The Pension Funds Adjudicator has interpreted this section as placing a positive obligation on funds:

*“My experience.... has been that most funds simply read the complaint and reiterate their own position in relation to it. A more contextual and purposive approach to the provision suggests that the appropriate response by a fund and its trustees should be to engage in an internal process of dispute resolution....”*

*It is to be hoped that pension funds will give consideration to setting up effective internal means to achieve that objective.”*

**[1999] 9 BPLR 55(PFA) at 88D-E**



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# STATUS QUO

- The PFA recently introduced conciliation as a mechanism to resolve disputed claims
- PFA has appointed a number of conciliators (currently 6) to deal with complaints which are part of backlog of matters
- Trustees are increasingly under pressure to ensure that their funds comply with section 30A
- The PFA to implement scorecard to assess funds



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## STATUS QUO (Cont.)

- Current adjudication process is successful in:
  - Get the parties around a table to talk and many complaints are resolved through this dialogue
  - Building trust between the industry and its members  
The PFA is acting as a bridge builder
- But:
  - Often conciliators are ill-prepared (why?)
  - Specific knowledge of the PF Act is limited, sometimes non-existent
  - Time is wasted trying to get conciliator to understand the issue at hand which frustrates the principal officer
- Funds are critical of the fact that they have no discretion in which claims are referred to conciliation.



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# THE MEMBERS' VIEW



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# RECOMMENDATIONS

- Develop pension fund specific expertise in the conciliators
- Put in place improved systemic integration between the funds and the adjudicator
- Make the whole process more accessible to the members
- Funds must build additional internal capacity to ensure claims are dealt with before they become disputed
  - Protects relationships and member loyalty
  - Once referred to the adjudicator, complaints are heard in the public domain



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