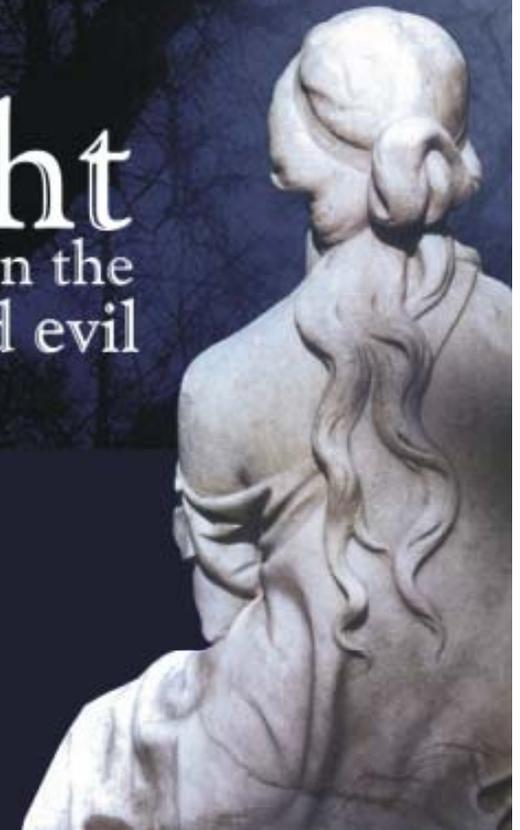


Conciliation & Mediation in
the Pension Fund
environment

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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