Case 5/2010

Funeral benefit claim – repudiation of claim on grounds of late notification. Is this the appropriate case for the Ombudsman to exercise his equity jurisdiction?

Background

1. Ms S, who is the policyholder and premium payer, lodged a claim for a funeral benefit with Sekunjalo Life Assurance Limited ("the insurer") upon the death of Mr. M, who had enjoyed cover under the policy as a member of her extended family. The claim was lodged on 26 May 2008, while Mr. M ("the deceased") had passed away on 23 August 2007.

2. The insurer repudiated the claim on the ground that it had been lodged more than 6 months after the deceased's death. Its decision to repudiate the claim was based on Clause 4 of a document captioned "Rules, Terms & Conditions of Participation in the Bonitas Funeral Fund", which stipulates as follows:

   > "Upon the death of a person covered under this fund, notice of a claim must be given to a Bonlife office within six months of the date of death, OR you may contact Bonlife who will direct you to the nearest approved (HT Group) funeral parlour for the arrangement of your funeral and claim".

3. Ms S explained that she had not been aware that there is a time limit for the notification of claims, claiming that she had never received a policy contract document or the rules from the insurer. She further stated that she had originally been a member of the Bonitas Medical Scheme which had offered its members the option to take up membership of the Bonlife Funeral Scheme.

   She stated that after she had taken up the option and joined the funeral scheme, all she received was a Bonlife membership card and a document explaining what benefits would be payable.

4. The insurer contended that it posted the documents to Ms S's given address, which, according to the insurer, is the one she had furnished to it upon commencement of the policy contract. It could, however, not produce any proof of posting of the documents.

5. In line with the Ombudsman's Office's Practice Note on late submission of claims, the insurer was invited to furnish reasons why the Ombudsman should not exercise his equity jurisdiction and instruct the insurer to assess Ms S's claim on the merits despite the late notification.

6. Briefly, the relevant Practice Note states that while the Office in principle enforces time limits placed by insurers on the periods within which claims should be submitted, where the circumstances of a case are such that fairness to both parties requires that the office should exercise its equity jurisdiction in favour of the complainant, it will require the insurer to consider the claim on its merits despite the late lodging of the claim.

7. The relevant circumstances that are taken into account in exercising the office's equity jurisdiction include: the length of the delay in lodging the claim; the fact that the insurer was aware, within the time limit, that the complainant intended to claim but the

prescribed formalities for lodging the claim were only complied with after the lapse of the prescribed period; the fact that the complainant was not to blame for the delay in prosecuting the claim (e.g. he was in a serious condition as a result of accident/illness and could not reasonably apply his mind to prosecuting the claim); the explanation that has been given for the delay; and the prejudice that is likely to be suffered by the insurer by receiving the claim beyond the prescribed time limit.

8. The insurer failed to furnish facts showing any prejudice that it was likely to suffer and merely pointed out that Ms S was lax or negligent in failing to lodge the claim on time.

Provisional determination

9. A provisional ruling was issued against the insurer on 24 February 2010, to the effect that it was not justified by the provisions of the relevant policy contract to refuse to assess the claim on the merits; and further that fairness to both parties requires that the office should exercise its equity jurisdiction in favour of Ms S.

10. The provisional ruling was based on the following findings:

- The insurer's purported reliance on clause 4 of the Rules, Terms & Conditions of Participation was misguided in that while the clause in question contains a time limit on the period within which claims have to be notified, it does not state that a failure to lodge a claim will result in the claim being unenforceable.

- The insurer was therefore not entitled to refuse to assess the claim on its merits since the clause in question did not give it the right to do so.

- Regarding the exercise of the office's equity jurisdiction in Ms S's favour, the following factors were taken into account:

    - The delay in lodging the claim was not excessively long since it was merely three months outside the time limit.

    - Ms S's claim that she never received the policy contract was not shown by the insurer to be untrue on the probabilities.

    - The insurer's assessment of the claim on the merits was unlikely to be hindered by the unavailability of witnesses' statements, police accident reports, etc, since the deceased's death was due to natural causes, rather than by accident.

    - The insurer had not shown that it may be prejudiced in any manner by receiving and assessing the claim outside the prescribed time limit.

11. In response to the provisional determination, the insurer raised contentions about lack of acceptance of claims affecting the cost of such cover which were either irrelevant or which did not amount to prejudice in the real sense.

Final determination

12. The insurer having failed to show any potential prejudice that it will suffer by receiving and assessing Ms S's claim outside the prescribed time limit, the provisional ruling is confirmed.

13. The insurer is thus directed to assess Ms S's claim on its merits and to notify both this Office and Ms S and/or her legal representative of its decision and the reasons for it by no later than **Monday 10th May 2010**.

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Postscript

The insurer thereafter assessed the claim and found it to be valid for payment.