

Case 17/2014

Funeral Benefit Claim – claim declined on grounds that the life assured was no longer covered on the policy.

Background

1. Ms M, who is the policyholder and premium payer of a funeral policy lodged a claim for a funeral benefit with Regent Life (“the insurer”) upon the death of Mr M, her brother who had enjoyed cover under the policy as an Extended Family member.
2. The insurer repudiated the claim on the grounds that Mr M was no longer covered on the policy as his cover had ceased when he reached the age of 21.
3. When Ms M applied for the cover for her brother on 21.06.2011 he was almost 20 years old (D.O.B. 16.09.1991).
4. Ms M was not informed by the insurer when her brother was removed from the policy on his 21st birthday and neither was she given the opportunity to cover her brother on the policy with an increased premium.
5. The application form did not refer to this unusual or unexpected provision in the policy. In our experience it is unusual for an extended family member’s cover to be terminated at age 21. We had never come across such a term and we could not find any other insurer that had a similar policy provision when we made enquiries.

Provisional Determination

6. A provisional determination was made against the insurer on 19 June 2014 highlighting all of the above issues.
7. The provisional ruling referred to the following:
 - Although the insurer had acted in accordance with the provisions of the contract, the unusual provision had not been highlighted in the application form;
 - The insurer had not informed the policyholder that her brother had been removed from the policy and given her the opportunity to cover him as an adult with the commensurate increase in premium;
 - And that in view of the circumstances the claim should be considered and that any increased premium should be deducted from the benefit payable.
8. In response to the provisional determination, the insurer raised the following objections:-
 1. “We agree that it is a requirement of the policyholder protection rules, that limiting clauses in particular must be brought to a proposer’s attention prior to the conclusion of sale, in order for the proposer to make an informed decision regarding cover.

In this regard we refer you to point number one of our response dated 14/05/2014. For ease of reference we shall repeat the most applicable portions below:

*As this is **intermediary business**, the cessation of cover at age 21 years would have been **verbally** explained by the broker at time of policy sale.... Therefore the broker would be obligated to have disclosed this material fact to the proposer.*

In this regard the brokers signed declaration (under section 10 of the application forms) also states as follows:

*...I am **registered** with the financial services board...
...I am **accredited** and authorized to sell this product...
...I confirm that... I have done all the necessary **disclosures**, checks, validations and records **required by law**.*

For this reason we **disagree** that the provision (which limits children's cover to a maximum of 21 years of age under **all sections** of the policy) was not brought to the proposer's attention. On the contrary the broker has signed the above-stated declaration which confirms *inter alia* that all the necessary disclosures required by law **have been made**.

We also wish to reiterate that the provision applies to all sections of the policy as evidenced by the policy terms and conditions. In addition within the facts of this particular case;

- A. The insured was **verbally** made aware of the fact that children's cover would cease at age 21. This is confirmed by the declaration signed by the **broker** and which has been discussed immediately above.
- B. The insured received policy schedules wherein the policy term / duration for the component is CLEARLY and UNAMBIGUOUSLY noted as "**1 yrs**".
- C. On the 4th of July 2013 an annual renewal letter was sent to the insured and already on this schedule the cover **no longer reflected** for the component.

We advise that the intermediary in this case was **O... financial Services** who are a registered FSP and have their own FSP license code.

Thus, it would be O who remain responsible to evidence compliance with PPR requirements at the time of policy sale.

This is the reason why Regent Life is of the belief that the matter has progressed to a stage where the pivotal issues in dispute pertain to the advice tendered during the sale of the policy, and for this reason it should be referred to the offices of the FAIS Ombud for further adjudication.

2. We concede that no letter was sent to the insured on or around September 2012. However the insured was made aware of the policy term at inception and through subsequent correspondence. Please refer to points (1)(B)

and (C) above. For this reason the insured was aware of the component expiry and therefore no separate letter confirming the expiry was required.

3. The policyholder would have been able to re-apply to have her brother covered upon his reaching majority. This is **not** an automatic process, and it was therefore incumbent **upon the policyholder** to request a re-rate, and in doing so provide Regent Life the opportunity to **elect** as to whether continued cover would be appropriate.

Once the component had reached majority, we believe that our contractual obligations regarding the component came to an end through the natural expiration of the contract (as it pertains to the component).

There is no obligation on Regent Life to formally offer continued cover to the policyholder for the component. This, in conjunction with the fact that on several occasion, the policyholder was made aware of the component's lapse would have been adequate to enable the client to request additional cover.

It is writer's view that this would likewise have formed part of the advice tendered by the broker to the policyholder at time of contracting in so far as it pertains to limiting clauses and the consequences thereof.

Pursuant to the above, Regent Life would like to request that consideration is given to the fact that the policy was sold by an intermediary who have their own FSP license.

All requirements pertaining to the sale of the policy are answerable by the mentioned intermediary and should be adjudicated upon by the FAIS Ombud who rightfully should refer the complaint to O Financial Services.

We also remain of the humble opinion that the policyholder was made aware of the limitation through the policy terms and conditions, renewal notices, as well as subsequent schedules.”

Final Determination

9. A final determination was issued:

“Your further comments received on 2 July 2014 have been discussed at a further Adjudicator Meeting on 11 July 2014.

1. We must point out that our provisional determination focussed on the insurer's obligation, and that the duty to highlight the unusual provision does not rest solely on the broker or intermediary but rests, in the first instance, with the insurer. The application form, forms part of the contract and therefore the application form should clearly have highlighted the fact that cover for Extended Family members under the age of 21 would cease at age 21. The contrary is true. The application form makes mention of a Maximum Entry Age for Immediate Family Members as “*Spouse 65 ANB and Children 21 ANB*” but there is no restriction indicated for *Children 21 ANB* under Parents and Extended Family funeral cover.

2. You are therefore incorrect in stating that the matter does not fall within our jurisdiction. It may be that the intermediary also fell short in his duties. That is not what we are determining.
3. We are determining your liability. Your statement that - *“The insured was verbally made aware of the fact that children’s cover would cease at age 21. This is confirmed by the declaration signed by the broker and which has been discussed immediately above”* - has not been tested. The fact that the broker signed a declaration is not proof that he brought this particular provision to the actual attention of the policyholder. In any event, the duty to highlight unusual policy provisions in documentation rests with the insurer in our view. After all it is not the intermediary who drafts the documentation.
4. Furthermore, Regent did nothing further when the cover actually terminated to bring the termination of cover to the attention of the policyholder. This could have been done by asking the policyholder whether she wanted to continue to cover her brother for an additional premium.
5. We are of the opinion that this claim should be assessed and any premium payable for Cover as an Adult Extended Family Member can be deducted from the claim amount.

This is our final determination in this matter.”

Result

The insurer has subsequently paid the claim, less the premiums which would have been payable in respect of the cover for the deceased.