CASE 4

Failure to furnish policyholder with copy of the policy for more than a year after inception of the policy

Failure to provide responses to Ombudsman – is an award of compensation appropriate, and if so, what is the appropriate amount?

Background

1. On 31 July 2008, the complainant applied for funeral cover for his elderly parents, his brother and himself. Two policies, commencing on 1 August 2008 (no.21CLO51435; covering the complainant and his extended family) and 1 September 2008 (no. 21CLO51438; covering just the complainant), respectively, were issued with New Era Life as the underwriter. Although premiums were deducted from his salary in respect of the two policies from the respective dates of inception, the insurer only furnished the complainant with a copy of the second policy in which he was the only life assured. Numerous telephonic requests to the insurer to furnish him with a copy of the first policy, no. 21CLO51435, were in vain.

2. On 21 April 2009, the complainant faxed a letter to the insurer to cancel both policies, and when the insurer continued to deduct the premium that was due after that date, the complainant, in May 2009, instructed his employer to cancel the arrangement to deduct the premiums from his salary. It is only some months after the intervention of this Office that the required policy was furnished (on 3 September 2009). According to the complainant, the insurer had deducted 8 monthly premiums of R900 in respect of policy No. 21CLO51435.

3. Not only did the insurer not give any explanation to this Office for its failure to furnish the complainant with a copy of the policy, but it failed to communicate in any manner with the complainant to explain to him that there was a problem with furnishing him with a copy of the contract (if that was the case), and had also not proffered any apology to him for the delay.

4. The insurer was requested by this Office on 18 June 2009 to furnish us with a copy of the policy application form and of the policy schedule. On 2 July

2009, a reminder was sent to it and when no response had been received by 20 July 2009, an *omnibus* reminder letter was sent to the insurer. An *omnibus* reminder alerts the insurer to the fact that the complaint will be marked "incompetent" and charged at double the normal case fee. The insurer is also cautioned that a compensatory award will be considered in terms of rule 3.2.5 of our Rules and that Rule 3.4 may be invoked if no response is received. Rule 3.4. reads:

> *"If a complainant or a subscribing member fails or refuses to furnish information requested by the Ombudsman within the period fixed for that purpose, the Ombudsman shall be free to make a determination on the information as may then be available to him or her."*

It is only on 26 August 2009 that the *omnibus* reminder letter was responded to, with the insurer stating that it had already responded, whereas it had not in fact responded to the query of the 18 June 2009, but had responded to the initial complaint on 15 June 2009.

5. A provisional determination was issued in which we took the view that:

   a. An applicant for insurance is entitled to be furnished with a copy or a summary of the policy within a reasonable period from the date of approval of his application so as to enable him/her to decide, after reading through the contract, whether or not to go ahead with the policy. He has a period of 30 days (the "cooling-off" period) in terms of the Policyholder Protection Rules to make that decision. In this case, the insurer's failure to furnish him with a copy of the policy deprived the complainant of the opportunity to make use of the cooling-off provisions. It thus cannot be said that he was fully aware of the terms of the contract and had agreed to continue with the policy.

   b. In the view of the office, the complainant was under the circumstances within his rights to cancel the policy on 21 April 2009 (policy no. 21CL051435) and to demand a refund of all the premiums that were deducted from his salary and paid over to the insurer. The insurer's assertion that "the client and his dependants were on risk while the policy was in force, therefore there will be no refund of premiums" could not be sustained insofar as that particular policy is concerned. However, with regard to policy no. CLO51438, the complainant had the

opportunity to decide whether to go on with the contract or not, and he appeared to have chosen to let the contract stand. Premiums were not refundable on policy no. CLO51438.

c. The level of service that has been rendered to the complainant was unacceptable and incompetent and he sustained material inconvenience as a result of it, and had (perhaps to his detriment) taken the decision of cancelling both policies.

d. Rule 3.2.5 of the Ombudsman's rules caters for situations similar to this one, among others. The rule grants the Ombudsman to make a determination, in which he may:

> "3.2.5 award compensation, irrespective of a determination made in terms of Rule 3.2.2 or 3.2.3, for material inconvenience or distress or for financial loss suffered by a complainant as a result of error, omission or maladministration (including manifestly unacceptable or incompetent service) on the part of the subscribing member; provided that the amount of such compensation shall not exceed the sum of R30 000 or such other sum as the Long-Term Insurance Ombudsman's Council ("the Council") may from time to time determine;

e. Having taken into consideration all the relevant factors, it was deemed appropriate that a compensatory award in the amount of R5 000 be made in favour of the complainant. Furthermore, New Era Life was directed to refund to the complainant an amount of R7 200 in respect of the premiums that were paid towards policy no. 21CLO51435, together with interest thereon calculated from 1 May 2009 to the date of payment.

6. Subsequent to the provisional determination, the underwriter confirmed in writing that it was abiding this Office's ruling insofar as the refunding of premiums that were paid towards the relevant policy, together with interest thereon.

7. It, however, indicated that it did not agree with the compensatory award of R5000. The stated reason was that the company was under curatorship. In elaboration, it stated that when the curatorship process commenced, the staff complement at the company had to be reduced, which had the effect that the remaining staff members were not adequately trained to deal with the day-to-day running of the business and thus could not respond to clients' queries (and presumably those from this office) on time.

8. It further explained that the curators themselves are not in a position to attend to all such queries on time either, and gave the undertaking that since the majority of curatorship queries had been dealt with, the day-to-day aspects of the business would be attended to in normal time with effect from January 2010.

Final Determination

9. The underwriter's further submissions were considered by the Adjudicators' meeting, and it was decided to confirm the provisional ruling *in toto*, as the meeting was of the view that the adverse impact of the placing of the company under curatorship (which provisional curatorship became effective from 8 July 2009), could not have resulted in the incompetent and manifestly unacceptable service that was rendered to the complainant in April 2008 (long before the company was placed under curatorship).

10. The meeting was also of the unanimous view that the fact that the company is under curatorship does not in any way impact upon the ability of the underwriter to pay the compensatory award amount.

11. The provisional ruling that was made on the 11 November 2009 is accordingly confirmed as a whole, and the underwriter is instructed to comply with this ruling within 30 days hereof.

CN

13/01/2010