

CASE 16: LATE SUBMISSION OF CLAIM UNDER INDIVIDUAL FUNERAL PLAN

Policy providing submission of claim within six months from date of death; late submission due to personal circumstances and policy unknown to claimant; insurer unable to show specific prejudice if claim admitted; exercise of equity jurisdiction

Background

On the death of an insured the insurer must be notified within a period of six months of the date of death. The relevant clause in the policy is clause 8.1 which reads as follows:

“Upon death of a person covered under this scheme, notice of a claim must be given to the Underwriter within 6 months of the date of death. Failure to present the claim for consideration within the 6-month period specified above will result in the automatic repudiation of the claim.”

The principal insured (“the deceased”), who was insured under an individual Funeral Plan, issued by Safrican, passed away on 26 January 2011. The claim was submitted by his father, the beneficiary, on 15 November 2012. The primary reason provided for the late notification was that the beneficiary was unaware of the existence of the policy and only discovered it when he sorted out some files that belonged to both himself and the deceased. He also stated that his son had lived with them up to a year prior to his death, and used his parents’ postal address. As far as he knew no mail was ever received from the insurer, including at the time after death when the premiums had ceased due to the premium payer passing away. The beneficiary stated that the death of both his son and his brother within a relatively short period of time had prevented him from dealing with his affairs such as the sorting out of documents.

The claim was submitted within three days of the discovery of the policy but still 16 months after the expiry of the six months waiting period. Safrican submitted a letter from its administrator, in which the administrator declined the claim on the basis that the claim was lodged outside the prescribed period.

Provisional determination

At an adjudicators' meeting it was decided, after considering the submissions by both parties, that the insurer be requested to consider the claim. The meeting reiterated its views that the exercise of this office’s equity jurisdiction in this matter was reasonable. The insurer had not raised that it would suffer prejudice by admitting a late claim. Further, the policy, an individual plan, was 10 years old and up to date with its premiums at the time of death.

The meeting was of the view that if this office was precluded from exercising its equity jurisdiction on the basis that the insurer’s repudiation of a claim was in accordance with the provisions of the policy, the office would be precluded from exercising equity in just about every case. The purpose of the equity jurisdiction was to enable the office to depart from the express terms of the contract when strict adherence thereto will result in hardship or unreasonableness, given the circumstances of the case. In consideration of the insurer’s response and the reasons for the late submission, this office exercised its equity jurisdiction in favour of the complainant and issued a provisional determination.

The insurer objected to the provisional determination and a final determination was subsequently issued.

Final determination

The case was again submitted to the adjudicators' meeting, to re-consider the complaint and the insurer's further submissions, which are set out below.

1. The insurer's response to the provisional determination was that:
 - (a) The insurer will be significantly prejudiced if it is asked to make the payment of the claim, as it will be difficult for the insurer to:
 - i. Assess the validity of the claim
 - ii. Investigate the circumstances that led to the death
 - iii. Verify the documents and vet credentials.
 - (b) The policy was in arrears and had been inactive.
 - (c) The complainant knew of the existence of the policy and even if he could not find the policy documents he should have notified the administrators of the death.
 - (d) The insurer is well within the terms and conditions of the policy to reject the claim.
2. In the provisional determination, this office pointed out that there were a number of relevant factors and competing interests to consider. The meeting had reiterated its views expressed in the provisional determination and that the exercise of this office's equity jurisdiction in this matter was justified. With regard to the points which Safrican raised, the meeting was of the view that Safrican had not demonstrated that there would be any specific prejudice to it if this specific claim, which emanates from an individual funeral policy, was paid.
3. In the provisional determination this office raised a number of points on the exercise of this office's equity jurisdiction and while the final determination referred to them they were not again repeated in that determination. As stated experience had shown that, contractual terms which were not in principle unfair or unreasonable or contrary to public policy could in given circumstances also result in an unjust result.
4. As stated in the Practice Note on Late Submissions, our office agrees that a clause in a policy requiring a claim to be lodged within a stipulated period was not *per se* unreasonable or unfair and reliance by an insurer on such a clause will, in principle, be enforced by this office. The enquiry was whether taking into account all relevant factors, fairness dictated that we should exercise our equity jurisdiction by departing from the express terms of the contract in order to prevent an unjust hardship.
5. Safrican stated that late submission makes it difficult for the insurer to assess the claim. In this case the deceased died of natural causes. The policy's only exclusions were a crime-related cause of death and suicide. No details were given by the insurer as to the further investigations it would have undertaken in this case. In our view it was not likely that, if the death certificate indicated a natural cause of death, confirmed by the Notification of Death official form, that any further investigation on the cause of death would be deemed necessary. If such investigation was deemed necessary it was unclear why it could not be done at a later stage. Even if the submission of the claim was made within the prescribed period, the insurer was required to verify documents and the same process could be followed if the documents were submitted outside the prescribed period within a reasonable period of time. In this case the claim was submitted 16 months late

and the insurer should have been able to verify the validity of the claim, without too much difficulty. Assessing the validity of a death claim where it is a natural death under this policy should in general not be as onerous as death from unnatural causes given the exclusion clauses in this policy.

6. The policy went into arrears after the deceased passed away as he was the premium payer. According to the complainant his late son used his address as he (the deceased) had moved to an informal settlement. If the administrator had sent letters to the deceased warning him that the premiums were not being received, the complainant would have received the letters at his home, and he would probably have noted that they came from the insurer or administrator, prompting him into action. The insurer advised this office that the administrator does not have copies of correspondence sent to the deceased.
7. As to the reasons of the delay, it was this office's view that if the complainant had known of the policy when his son passed away, he would have submitted the claim so that the benefit could be paid, as he had stated that the funeral expenses were a burden to him. In addition to the above, the meeting's view was that the fact that the complainant had lost his son and his brother in the same period contributed to the complainant's late submission of the claim.
8. In view of the above, the meeting concluded that Safrican had failed to show cause why the exercise of our equity jurisdiction in favour of the complainant on the basis set out in the provisional determination was not warranted or justified in the circumstances of this case. More particularly, the meeting took into account that Safrican had not demonstrated particular prejudice in this case. The meeting was of the view that it could in any event not be said that Safrican had shown that any prejudice in this case outweighed the distress which the complainant would bear if the terms of the contract were applied strictly.
9. The examples provided in the Practice Note on Late Submission were intended to be no more than general guidelines and one should rather ask what was reasonable in the circumstances.
10. The provisional determination that the insurer should assess the claim and not rely on the late submission clause was made final. Payment was thereafter made by Safrican to the complainant.

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