

Background

1. Our office received 3 complaints from 3 different complainants about the same issue. The policyholders, who had also been the lives assured, had taken out industrial policies with African Life in the 1950's. The sum insured was expressed in pounds in the policies, and ranged from £20 to £50. (Industrial policies were policies now known as funeral policies or assistance business policies.)
2. When death claims were recently lodged, Sanlam Sky, the current insurer, used a conversion rate of £1 to R2. The claimants, who are the complainants to our office, were dissatisfied because they received benefits of between R40 to R100 on these policies that had existed for 60 odd years. (In the one case the insurer had added R4 interest as the death benefit was paid 20 months after the life insured's death.)
3. The policies had all been made paid-up (i.e. premiums stopped) many years ago when an investment value (usually the same amount as the sum insured on death) was paid to the policyholders.
4. We advised the parties that we accepted that the conversion rate of £1 to R2 was correct; that was the rate which applied at the time when South Africa converted from South African pound to rand currency. We asked Sanlam Sky, however, to reconsider whether the benefit after so many years should not be increased on an *ex gratia* basis. This had been the approach of some other insurers dealing with these old policies. We pointed out that if the complaint was settled after such an *ex gratia* offer we would be willing to change the cost category of the case to 'Basic'; this is a lesser charge than our 'Standard' case fee. Sanlam Sky refused to make an *ex gratia* offer as the policies were non-profit policies and they considered it fair to pay the benefit which was promised in the contract.
5. Sanlam Sky explained that a committee (the 'PVC') within the insurer considered this type of "legacy" problem and applied consistent principles. The committee looked at whether the original commitment was clearly spelt out and whether the policy performed in line with that, and whether there was something blatantly unfair in the product design. Sanlam Sky emphasised that it is not their intention to apply modern product design to legacy business.
6. Sanlam Sky pointed out that it is unreasonable to expect an insurer to pay more than the sum insured in a policy where the sum insured is fixed. Sanlam Sky believed that their approach is defensible both in terms of the contract and Treating Customers Fairly (TCF).
7. We had requested Sanlam Sky to comment on the fact that there had not been any communication with the policyholders for a very long time. Sanlam Sky stated that although this lack of communication was undesirable, it did not believe that it was relevant that there had not been communication because the contractual documentation was clear.
8. We did not agree that the lack of communication was acceptable and stated the following in our provisional determination:

“However, the meeting questions the following views of your PVC: The fact that the lack of communication with the policyholder is not regarded as an indication of poor service or inconvenience. We note the reason for regarding this as not relevant is because the insurer regarded the documentation in possession of the policyholder as sufficiently clear.

Even if we assume that the policy is sufficiently clear, it can surely not be the only relevant factor in deciding whether there should be ongoing communication with a policyholder? If that is the relevant criteria then an insurer would not need to communicate if the policy was clear even in the current environment.

If the insurer had communicated with the policyholder during the past 40 years updating the policyholder with the current value of the policy of R100, the policyholder would have realised that this funeral policy would not cover the cost of a funeral. The policyholder would have been in a position to consider his/her options.

Presumably communication with policyholders is not just to clarify the terms of the original documentation but also to keep policyholders updated. Such communication would be even more important for policyholders who purchased policies some time ago where those policies have become “outdated” in respect of the benefits that they provide.

We realise that there is a cost to administering these policies and to communicating with policyholders, we are not suggesting that annual updates were required but some communication would not be an unreasonable expectation.

In the circumstances the meeting came to the decision that the insurer should pay some compensation to the complainants as we do regard the lack of communication as poor service. We decided that R2000 per complainant would be appropriate .”

9. The insurer responded as follows:

“Please be note that when these policies were made paid up, endorsement letters confirming the values were issued to clients. The documents were very clear in disclosing the value of the benefit payable on the death of each of the lives assured.

We are aware that there was lack of communication between our office and the clients. Given the unique circumstances of these products and the poor communication to the clients, we are prepared to offer an ex-gratia amount of R500.00 per client as we are confident that they were aware of the benefits payable on each of the polices.

We consider that this amount should be sufficient and will appreciate if you can confirm if this is in order.”

10. We sent the offers to the complainants but they rejected the offers and the insurer was not willing to increase the offer:

“The decision to award the compensation amount of R500 was the result of probing discussions on our side and the matter was referred to our CRC and the Policy Values Committee, to determine if the request for compensation and the suggested amount is reasonable.

We considered the position of the policy holder as discussed previously, taking into account the TCF component regarding the poor communication to the policy holder.

Taking all factors into account we are of the opinion that the R500 that we offer is reasonable and will not be reviewed.”

11. Our office thereafter considered the matter at an adjudicators' meeting and our final determination is as follows:

Final determination

12. The provisional determination of R2 000 is confirmed. The R500 offered by Sanlam Sky is not enough in today's terms to compensate the complainants. Sanlam Sky state that taking all factors into account that they regard R500 as reasonable. Sanlam Sky did not mention what all the factors were which were taken into account and we can accordingly not give consideration to them.
13. The policyholders who bought these policies bought them for the purpose of covering the cost of a funeral. When the policies were purchased the sums insured would have covered the cost of a funeral or would have gone some way to doing so. This probably would have been the case for some time, until inflation took effect. As one of the complainants wrote in her letter of complaint about the two policies her mother had owned:

"My mother – R.M. ID took two policies with 'The African Life Assurance Society Ltd' in 1949

Faithfully believing that if anything should happen to her during her lifetime she will have the Assurance of a dignified funeral at her time of death

However, when she passed on, 11th February 2015 at the age of ninety – Sanlam told me S.E.M. that these Policies are worth R100.00 – not worth the paper they are written on.

Now in 1949 my mother made great sacrifices to uphold this policies and I believe she is entitled to more than this INSULT."

14. Our office understands that an insurer might not be keen to send out annual or regular notices to all the policyholders in this portfolio because of lack of up to date contact details, and it is a costly exercise. However, to make no effort to communicate with these policyholders over such an extended period is also not acceptable. The insurer operates in the financial services environment and would have known that these policies had lost their value and would no longer fulfil the purpose for which they were bought; far more so than the policyholders.
15. Our office has in the past had complaints about these "old policies" issued by other insurers. We have found that there were other insurers that had tried to make contact with policyholders when the policies became worthless, to warn policyholders that they needed to make additional provision for their funerals. Some of these attempts included publishing notices in newspapers and magazines, distributing brochures and writing to policyholders, warning them of low value of the policies and suggesting some action by policyholders. Insurers are very effective at marketing their products to the public, some of that expertise could have been put to use in order to communicate with existing policyholders. Other insurers have also added further amounts to the policy benefits.
16. From the correspondence on file Sanlam Sky had made no such effort at communication, and, from the initial correspondence appear to have regarded it

as unnecessary to communicate with these policyholders because, according to Sanlam Sky, the policies were clear about the sum assured. Sanlam Sky mention that the endorsement letters when the policy was made paid-up made it clear what the value of the policy was.

17. These old policies might not in fact be that clear to a lay person, for instance, the fact that the policy amount is expressed in pound causes confusion. In this type of complaint the complainant often expects the conversion rate to be the current British pound/rand conversion rate and not £1 to R2. As the one complainant stated:

“We feel that this policy was issued in pounds and that the pay-out should reflect an amount in relation to the current value of the pound.

If our currency would have been pounds, then pay-out would have been to the current value of a pound.

.....

If Sanlam-Sky cannot see the reasoning, then the pay-out should be made in pounds (as is set out in the original documents and the estate of the late JC can see to it that it is changed to our currency).”

Clarification of this aspect and the effect of inflation on the sum insured should have been communicated to policyholders at some stage during the term of these policies. We have received no indication that this was ever done or attempted. Sanlam Sky would however, now have the opportunity to attempt such communication with the other policyholders in this portfolio.

18. We have understanding for the difficulty of being fair to policyholders with so-called “legacy products” but the nature of long-term insurance business is exactly that, long-term. It must be expected therefore that some policies will exist for a long time, such as these have done. An insurer cannot ignore its duty to these policyholders because of the difficulties of dealing with such old policies. These difficulties were always part of, and should have been anticipated to be part of long-term business. Insurers need to accommodate this in their business processes.
19. Our final determination is that an amount of R2 000 is payable to each of the three complainants.

Outcome

Sanlam Sky is in the process of arranging payment.