

Re-opening of closed files

1. The basic rule is that once a file has been closed the unsuccessful party's only recourse is to appeal if he/she/it, be it complainant or insurer, is unhappy with the outcome.
2. That is particularly so when the ruling followed upon a consideration of all the relevant material submitted by both parties.
3. But when the provisional ruling has been made final because the unsuccessful party failed to respond by the stipulated return date, a further communication may have to be treated as an application to re-open the file.

Note: in such cases the closure letter to the non-responding insurer or the complainant should read: *"In view of your failure to respond within the stipulated timeframe, we are now closing our file."*

4. Considerations to be taken into account in deciding whether such an application should succeed, would be:
 - (i) the extent of the delay (the shorter the delay, the more readily the file should be permitted to be re-opened);
 - (ii) whether a credible explanation is tendered for the delay in not responding to the provisional ruling before the return date;

- (iii) whether substantive reasons on the merits are furnished, which, if these had been furnished before the return date, would have caused it to be further pursued;
- (iv) whether the delay caused the other party irretrievable or, at any rate, significant prejudice.

5. If no such reasons are furnished, the file must remain closed.

(Compare Associated Institutions Pension Fund v van Zyl 2005 (2) SA 302(SCA) 321)