

Case 29 – Funeral benefit

Funeral benefit; Compensation for error on Participation Certificate, on which the complainant acted

A. Background

1. Time line

Date	Event
01/09/2011	Funeral policy commences
30/03/2015	Policyholder's brother, added for R10 000 cover
30/04/2015*	Expiry of waiting period for brother; cover commences
June 2017	Annual opportunity to make upgrades on policy
30 June 2017	Cover for brother increased to R 20 000; cover also increased for another sibling, and infant, added as a dependant
11/07/2017	New Participation Certificate issued showing increased cover at R20 000 for brother, but, incorrectly, that the waiting period expiry date for him is 30 April 2015*
19/07/2017	Brother passes away

2. The complainant, being the policyholder and main insured, submitted a claim for the funeral benefit and the insurer, Safrican, paid him a benefit of R10 000, citing that he was not due the upgraded amount of R20 000 as his brother passed away within the waiting period.

3. The Participation Certificate issued on 11 July 2017 states at Terms and Conditions of Participation:

"1...

4 The waiting period shown in the table below refers to the full calendar months the policy has to be in force before a valid claim will be payable. The period is calculated from the commencement date of the policy. It does not relate to the number of premiums paid. The waiting period shown shall apply on natural deaths."

No table is set out below on this particular Participation Certificate but from other documents issued by the insurer, the waiting period is six months in respect of increased benefits for extended members of family.

4. The complainant was aggrieved as the Participation Certificate, issued on 11 July 2017, shows that the cover amount is R20 000 and the expiry date of the waiting period is indicated as 30 April 2015 (which date had not been updated when the upgrade was made). The complainant added that he had made a telephone call to the insurer round about the time that he submitted his claim and he was assured that R20 000 was due to be paid.

5. Safrican averred that the complainant is a long-standing client and he should have known that there is a waiting period when an increase in benefits is made and that the Participation Certificate issued on 11 July 2017 could not have been correct in its reflection that the expiry date for the waiting period was two years earlier on 30 April 2015.

6. The office approached Safrican asking that it considers a compensatory amount to be paid to the complainant in terms of the office's rule 3.2.5 for the mistake they made on the Participation Certificate, which had evidently caused him inconvenience, unfulfilled expectations and distress in his reliance on the increased benefit.

7. The insurer was not amendable to this stating that the complainant should have read the Participation Certificate in its entirety and which reflects the policy's terms and conditions that a waiting period is applicable. It was not amenable to pay compensation.

8. The complainant asked that the office pursues his claim for R20 000.

B. Compensation Committee

1. It was decided to submit this matter to the Compensation Committee, under the Chairmanship of Judge R McLaren, the Ombudsman, for the consideration of compensation in view of the incorrect data set out in the Participation Certificate and which had led the complainant to rely on the larger benefit amount. He reiterated that he had suffered distress, inconvenience and financial loss in that he had to ask for donations when the insurer refused to pay more than the original cover amount of R10 000.
2. The Compensation Committee noted the policy's terms and conditions setting out the waiting periods but decided that the complainant should be paid compensation at the rate of R2 000 and that a provisional determination be done confirming this decision.

C. Provisional Determination

1. This determination set out the background of the matter, highlighting that the insurer had issued a Participation Certificate with incorrect data on it, and that the complainant had relied on the amount of R20 000 and had arranged the funeral of his deceased brother accordingly. Furthermore, it had been confirmed telephonically to him that he was entitled to R20 000.
2. The Committee confirmed that in terms of the policy provisions a waiting period applied and that the complainant was contractually not entitled to the upgraded amount but as the insurer made an error, and that it was evident that the complainant had suffered distress, inconvenience and financial loss as a result of the error, that a compensatory amount of R2 000 be paid to him by the insurer.

D. Reaction to Provisional Determination

1. The complainant replied that he was not happy with the recommendation that he be paid R2 000 as compensation. He stated that it was unfair and that he felt he was getting a raw deal, but he did not raise any new arguments.
2. The insurer also declined to make the payment of R2 000 and attached a Participation Certificate issued on 1 August 2017 which sets out the waiting periods. (It is noted that the date of this Certificate is after the date of death of the brother and this Certificate no longer reflects him as an insured.) They also submitted a copy of a letter dated 1 September 2011, addressed to the complainant, where the waiting periods are set out, being six months in the case of the brother and applies to increased benefits.

E. Adjudicators' Meeting

1. As the parties did not agree to the recommendation of the Compensation Committee as expressed in the provisional determination, the matter was escalated to the Adjudicators' Meeting, also under the Chairmanship of Judge McLaren, the Ombudsman.
2. The meeting considered the matter and raised a number of questions that had to be posed to the complainant, including details of the costs endured to arrange the funeral, having relied on the larger amount of R20 000, cause of death of his brother and why he had elected to upgrade in particular his brother's benefit in June 2017.
3. The complainant consequently submitted proof of the expenses undergone in the funeral arrangements. He received R12 000 in donations and submitted proof of costs endured of R11 325.95 and this is over and above the R10 000 he had received from Safrican. He declined to advise on the cause of death of his brother. It was further established that the insurer provides an opportunity once a year for the policyholder to make changes to his policy and this opportunity arose for the complainant in June at which time he upgraded the benefits of his two siblings and added his infant child.
4. The meeting, presided over by Judge McLaren, the Ombudsman, was presented with the additional information and after discussion, including the submissions of both the complainant and the insurer and their arguments, it was decided that a final determination be made as set out below at G.

F. Final Determination

1. The complainant has only one opportunity per annum to upgrade the policy and this occurred in June 2017 and he elected to increase the benefit amounts of his two siblings to R20 000.
5. He was issued with a Participation Certificate dated 11 July 2017 which states that his brother is covered for an amount of R20 000 and that the waiting period expires on 30 April 2015. This Certificate does not include a table setting out the particular waiting periods.
6. He relied on this amount and endured expenses of R11 325.95 over and above the original benefit amount of R10 000 and which was paid by the insurer.
7. The insurer declined to pay the increased benefit as it is its view that the complainant should have been aware that there is a waiting period before the increased benefit is effective. They referred to the "full" Participation Certificate that sets out the waiting periods and added that the complainant's participating employer was apparently particularly good with updating its members on benefits. The insurer averred that the complainant was opportunistic and abusive of the process to have increased the benefit of his sibling (at this time). This office advised the insurer that this kind of statement is out of place and an apology was subsequently submitted.
8. The insurer declined to pay the increased benefit and stated that any compensatory amount was also not due in the circumstances while the complainant reiterated that he had relied on the larger amount in good faith and had endured costs and distress through the error made by the insurer.
9. The meeting was of the view that it was not reasonable for the complainant to rely on the increased amount of R20 000 as the policy terms and conditions are clear that there is a waiting period when a benefit is increased, as follows:
"WAITING PERIOD"
 - ...
 - Where a higher benefit is selected at a later stage, the waiting period will apply to the increased amount not the then current benefit amount enjoyed"
10. The upgrade on the brother's benefit was made on 30 June 2017, the new certificate was issued on 11 July 2017 and the brother unfortunately passed away on 19 July 2017, within a period of less than three weeks after the increase was requested and certainly within the waiting period of six months. The complainant is contractually not entitled to the upgraded amount of R20 000.
11. However, it is evident that the complainant had suffered distress, inconvenience and financial loss in the process. It is clear that he is unhappy with his interactions with the insurer and it is kept in mind that the Participation Certificate issued on 17 July 2017 has an error in that it reflects an upgraded amount of R20 000 for his brother, the waiting period to expire 30 April 2015. This in itself is confusing and shows an administrative inaccuracy, which had created some expectations with the policyholder, with prejudicial consequences.

G: Final Determination Order and Outcome

In terms of rule 3.2.5, compensation was awarded to the complainant for the suffering of distress, inconvenience and financial loss on his reliance on information provided by the insurer. Taking into account the circumstances of this case and the proven costs endured by the complainant, the meeting decided that Safrican pay the complainant R5 000 in compensation, which is just less than half of the additional monies he had spent. Safrican consequently submitted proof of payment and the file was closed.