

FINAL RULING AGAINST FIRST RAND LIFE

1. The facts of the case are:

- The funeral policy with a sum assured of R30 000 commenced on 31 October 2011 with the late Ms M¹ as policyholder and life insured and Ms J her niece, as beneficiary.
- The policy lapsed on 2 January 2017. The complainant, Ms J, instead of the policyholder telephoned First Rand to reinstate the policy and after the reinstatement the premium was paid. The policy was reinstated on 4 January 2017.
- The policy states:

Policy Lapses and Reinstatements

If the plan lapses because the premiums (other than the first premium) have not been paid, it can be reinstated (started again) provided it is within 12 months from the date of lapse. The plan will be deemed to be reinstated on the date when the missed premiums and the first due premium have been paid.

If the plan has been reinstated no Funeral Benefit will be paid if an insured person died between the date the plan lapsed and the reinstatement date. From the reinstatement date the plan will have the same terms and conditions as it had at the date it lapsed, but all waiting periods will again apply from the reinstatement date e.g. no Funeral Benefit will be paid in the first 6 months if an insured person dies from natural causes or illness etc.

- From this provision it would appear that the only requirement for reinstatement is that the missed premiums and the next due premium should be paid. There is no requirement in the policy for the policyholder/life insured to make any declaration etc. to the insurer.
- The policyholder/life insured died on 26 August 2017 and the beneficiary, Ms J, claimed the benefit.
- The complainant provided receipts to prove that she had contributed to the funeral of her late aunt.
- First Rand relied on the following clause to decline the claim, as they stated Ms J impersonated the policyholder in the reinstatement phone call:

Fraud

If any claim under this plan involved fraud (cheating) or misrepresentation such as telling FNB Life a wrong age or relationship, the plan may be cancelled with no benefits and no refund of any premiums."

- Ms J pointed out there was no fraud or misrepresentation involved in the **claim** as such and that she had telephoned because her aunt's health was bad at the time and that her aunt had requested her to telephone in the presence of family members.

¹ The names of the policyholder and complainant have been changed in order to protect their identities

2. Our provisional determination stated the following:

“Even if it is accepted that Ms J made the phone call to First Rand it is not clear how this breached any provision in the policy or how it prejudiced the insurer. If the life insured was not alive at the time and the complainant impersonated her aunt there would have been clear prejudice. That is not the case.

In any event fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another. There was no actual or potential prejudice detected as a result of Ms J’s actions. The meeting was accordingly of the view that the insurer has not proved that it has a defence on which it can rely to decline the claim. In the circumstances it is obliged to pay the claim.”

3. After the provisional determination First Rand stated the following:

“The Insurer respectfully refers you to the below extract from the terms and conditions that was sent to your Office previously, relating to how the policy works,

How the Funeral Plan Works

- You are the planholder who owns and pays for the plan.
- The terms and conditions that are shown in this document as well as the information in the customer agreement will be applicable to the plan and must be met in order for FNB Life to pay any Funeral or Memorial Benefit. This also means that you must pay the premiums as agreed.

It should be noted that on every occurrence where there is interaction amongst our clients and the Insurer, validity of policyholder is always validated. The Insurer upholds that Ms J provided the deceased’s details at time of validation and impersonated to be the deceased. The aforesaid client validation process was accepted on a prima facie principle.

The Insurer maintains the view that, the true plan holder misrepresented the plan holder in an attempt to circumvent the requirements of the insurer. The Insurer humbly encloses bank statement from which the policy premiums were deducted, which indicates that Ms J deposited money into the deceased’s account solely for the premiums.

The Insurer avers that Ms J misrepresentation prejudiced the Insurer as from the aforesaid, she was the true plan holder of the policy, however impersonated to be the deceased.

We trust that you find the above to be in order.”

4. The complainant responded as follows:

“This policy was taken and signed for by my aunt in 2011 and immediately after that I paid the premiums every month from my ABSA bank account to her account for some time. I paid these premiums because my aunt did not have money at a time. I took the responsibility to pay it once more because it was my responsibility to bury her should something happen to her. And I took the responsibility to bury her as I always do with all my late mother's siblings.”

Final determination

5. “It is accepted that Ms J transferred money to Ms M's bank account to cover the premium amount so that the late Ms M could pay the premium. In our view that cannot be used as a reason to decline the claim. There is no legal principle preventing a beneficiary from funding the policyholder so that the policyholder can afford to pay premiums. The policyholder may not have been able to afford them otherwise. There is nothing in your policy, and it would in any event be an unusual and oppressive provision, that directs what the origin of the funds that the policyholder uses to pay premiums, has to be.
6. The fact that the policyholder and the beneficiary arranged their affairs in such a way to benefit themselves is not in itself illegal or unfair. It is not unusual for parties to organise commercial transactions in such a way that they may derive maximum advantage from their transactions.
7. The fact that it was the beneficiary who reinstated the policy (as opposed to the policyholder) has not been shown to have prejudiced the insurer. Whether it was the beneficiary, on behalf of the policyholder, or the policyholder who reinstated the policy, would not affect the outcome of the reinstatement.
8. This is a funeral policy which provided cover for the funeral costs on Ms M's death. She nominated her niece to receive the funeral benefit and the insurer must pay the benefit in terms of the beneficiary nomination. The insurer has not advanced valid grounds for refusing to make the payment. This is a final determination. Please advise this office within the next 30 days of payment of the benefit.”
9. The insurer paid the funeral benefit.