

Beneficiary nomination – living annuity – on death of annuitant insurer must adhere to nomination

1. The complainant in this matter was the wife of the deceased annuitant. The annuity was purchased with pension fund money and was a so-called GN18 annuity, in other words, it was untied to the retirement fund. The fund no longer had any obligation towards the annuitant.
2. The annuitant had indicated that the benefits should be payable to three beneficiaries on his death, his wife, the complainant, receiving 40% of the proceeds and his two major children each receiving 30% of the proceeds.
3. The insurer had in fact split the benefit equally amongst the three nominated beneficiaries. It justified its decision on the basis of wording contained in a clause in the annuity policy which read as follows: *“For the purposes of this contract, the Beneficiary will be the dependants and/or nominated beneficiary of the Annuitant, as determined at the date of the Annuitant’s death.”*
4. The annuity had been paid out in this form for some time before the complaint reached our office. The insurer argued that this clause made Section 37C of the Pension Fund’s Act relevant to the distribution on death and that therefore it made a decision that it would be fair to split the annuity equally amongst the three beneficiaries.
5. We could not agree with the insurer’s argument. We were of the view that the insurer was:
 - a. obliged to give effect to the deceased’s final beneficiary nomination;
 - b. that Section 37C of the Pension Funds Act was not applicable;
 - c. that the proportionate payment on an even split rather than the beneficiary nomination split could not be justified on either a contractual or an equity basis.
6. We accordingly made a determination that the insurer had erred in making payments as it had done and that the complainant was entitled to the amount that was due to her for the period that the annuity had been paid, on a 40% basis. In addition she was entitled to interest on the shortfall calculated at the rate set in the Life Offices Association (LOA) guidelines on interest i.e. the rate offered by Standard Bank on deposits for a period of 12 months.

7. The insurer accepted our ruling and made a lump sum payment of the arrear annuity payments and agreed to make future payments in accordance with our ruling.

JP
May 2007