

*Jurisdiction- death benefit payable to the deceased's estate- father of deceased authorised by the Master of High Court to take control of deceased's assets listed in an accompanying inventory-benefits in respect of this policy not listed in the inventory- insurer paid benefit to deceased's father- Master, acting on behalf of deceased's minor children, asserts that the insurer should not have paid the benefit to the deceased's father- Master asserts that the insurer be ordered to repay the benefit into the Guardians Fund.*

### **Background**

The deceased was the policyholder whilst his father, Mr A, was the premium payer of an accidental death policy.

The provision in the policy document dealing with payment of benefits stipulated:

*"This policy is not assignable and all benefits under this policy are payable to you (the policyholder) or your beneficiary/ies or your legal representative. If the benefit is payable in respect of your spouse or your children the money will be paid to you. No one other than you will have rights in terms of the policy against us. Receipt of the money so paid will be a valid discharge of our liability under this policy."*

When the deceased died due to an accident no beneficiary had been nominated. Consequently the benefit was payable to the deceased's estate.

Following the deceased's death, Mr A was issued with a certificate known as the "Letters of Authority" by the Master of the High Court (Master). This certificate reads as follows:

*"This is to certify that Mr A has been duly authorised to take control of the assets of the estate of (the deceased), as reflected in the inventory filed with me, to pay the debts, and to transfer the residue of the estate to the heir(s) entitled thereto by law."*

The relevant inventory listed two bank accounts containing amounts in cash. No other assets were listed in the inventory.

Subsequent to the issuing of this certificate Mr A lodged a claim with the insurer for the death benefit. The insurer paid him the benefit.

The Master, acting on behalf of the deceased's minor children, thereupon alleged that Mr A was only authorised to take control of the specific assets listed in the inventory to the Letters of Authority. This inventory did not include this policy's

benefits. The Master further alleged that Mr A used the policy benefit amount paid to him for his personal benefit and not for the benefit of parties with interest in the deceased's estate, in this instance, his own grandchildren.

The Master asserted that the insurer should repay the benefit amount into the Guardians Fund. The Master further asserted that the insurer should reclaim the monies it paid to Mr A.

For its part the insurer asserted that it paid the benefit to Mr A on the strength of the Letters of Authority and that it was under no obligation to check any inventory.

### **Discussion**

In dealing with this matter we first had to establish ourselves whether the office had jurisdiction to consider the complaint. Our Rule 2.1 provides;

*“Subject to Rule 2.2 the Ombudsman shall receive and consider every complaint by a policyholder, a successor in title or a beneficiary, or by a life insured or premium payer, against a subscribing member concerning or arising from the marketing, conclusion, interpretation, administration, implementation or termination of any long-term insurance contract marketed or effected within the Republic of South Africa.”*

### **Result**

It was our view that the prerequisites for this office to assume jurisdiction over this matter had not been met. The Master and/or the children of the deceased were neither policyholders nor successors in title nor beneficiaries nor premium payers in respect of the policy. Although they may have legal standing to claim in another forum they could not assume any legal standing for our purposes. In the absence of consent from the insurer the office lacked jurisdiction to entertain the complaint.

We were accordingly obliged to decline to hear the complaint.

**TS**  
**MAY 2007**