

Funeral insurance

Funeral benefit – no beneficiary nominated by the policyholder - benefit paid to someone other than the executor of the deceased's estate.

Background

In 1994 Mr M took out a funeral policy covering the lives of himself, his spouse and their children. He did not nominate a beneficiary. Mr M and his wife were divorced by decree dated 25 April 2000, and he passed away on 8 January 2003. Not being aware of the decree of divorce, and the ex-spouse not having disclosed it, the insurer paid the death benefit to the ex-spouse on 16 January 2003.

In February 2004 a competing claim was lodged with insurer by the deceased's common law wife, Mrs N ("the complainant") in her capacity as the executor of the deceased's estate. The insurer refused to pay the estate, its stance being that it had paid the ex-spouse in good faith. It contended that the complainant should claim the benefit from the ex-spouse, stating that:

"We won't pay out this claim twice because of the dishonesty of the ex-spouse."

The complainant lodged a complaint with the office, submitting that the benefit should be paid to her as the executor of the estate.

Discussion

There was no provision in the policy document which authorised or justified payment of the benefit to the ex-spouse where she had not been a nominated beneficiary. We pointed out to the insurer that in the absence of such a provision the benefit would have been payable to the estate. The insurer was therefore liable to pay the benefit to the executor of the deceased's estate. The insurer responded that its standard practice in cases of this nature had been to pay the benefit to a legal spouse or undertaker, and that if there was no legal spouse then the benefit was payable to the deceased's estate. We pointed out that even if this practice was correct, which it did not appear to be, it was clear that the payment of the benefit to the deceased's ex-spouse was made contrary to the practice because the deceased's ex-spouse was neither a legal spouse nor a representative of the estate.

We took the view that the payment of the benefit to the deceased's spouse clearly did not amount to a discharge by the insurer of its obligations in terms of the insurance contract.

The fact that the insurer was misled by the deceased's ex-spouse into believing that she was still married to the deceased at the time of his death was no defence to a claim by the rightful claimant, the deceased's estate.

We disagreed with the insurer's assertion that the complainant should claim the benefit from deceased's ex-spouse because it was the insurer that had been defrauded, and not the deceased's estate.

Conclusion

We made a provisional ruling that the claim should be paid together with interest thereon, and that a compensatory award should also be paid for material inconvenience and distress suffered by the complainant as a result of the insurer's reliance on a defence which was incorrect in law. The insurer complied with our provisional ruling.

NS
October 2009