



In the matter between:

THE COMPLAINANT

and

THE INSURANCE COMPANY

RESPONDENT

STATEMENT OF DETERMINATION OF COMPLAINT GIVEN IN TERMS OF SECTIONS 74 AND 75 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT NO. 2 OF 2010 (THE FSRA ACT)

INTRODUCTION

1. This complaint relates to insurance between the Complainant, and the Respondent,(the Insurance Company). The Respondent is an authorized financial services provider in terms of the FSRA Act, 2010. Accordingly, the Ombudsman has jurisdiction to resolve this matter by virtue of s 74 & 75 of the FSRA Act.

THE COMPLAINT

2. On 21 July 2021, the Complainant submitted a sworn statement of her complaint (the Complaint Form). The complaint form was supported by the following documents:

| Document | Dated |
|---|--------------|
| Request for Waiver | 22 June 2021 |
| Request for Assistance with the Insurance Company Claim | 19 July 2021 |

- 2.1. Complainant had a funeral policy with the Respondent.
- 2.2. On 17 June 2021 Complainant went to the Respondent's claims office to initiate a claim regarding policy number XXXX-10101010.
- 2.3. Complainant was informed that the claim will not be paid as the policy was on three months waiting period.
- 2.4. Complainant alleges that the reason for placing the policy on three months waiting period was as a result of missed premiums (four months January – April) that were paid only in May 2021.
- 2.5. Complainant alleges that she was never told that the policy was placed in three months waiting period any time prior to her claim date on 17 June 2021.
- 2.6. Complainant further submits that she is not happy that the Respondent is refusing to pay the claim.
- 2.7. Complainant alleges that the reasons by the Respondent are not satisfactory because according to her knowledge the policy is up to date and not owing.
- 2.8. Complainant submits that the terms and conditions of the policy were not communicated to her until when she lodged the claim.

- 2.9. Complainant further alleges that when she made the payments, she was never notified of the three months waiting period and what would happen should the insured event occur.
- 2.10. Complainant requests that the Respondent takes ownership of their mistake and acknowledge that the policy is not owing and is up to date.
- 2.11. Complainant prays that the Respondent pays out the policy in terms of the policy agreement entered into during inception of the policy.

3. THE RESPONDENT'S RESPONSE

On 30 July 2021, the Respondent submitted a response to the complaint and relevant correspondences between the parties were attached. The following documents were attached to the response:

| Document | Dated |
|-------------------------|--------------|
| Request for a Waiver | 22 June 2021 |
| Claims Repudiation Form | 24 June 2021 |
| Repudiation of Claim | 24 June 2021 |
| Notice declining appeal | 28 June 2021 |
| Customer Statement | 29 July 2021 |

The Respondent raises the following points in her response:

- 3.1 Respondent clarified that the insurer is the Insurance Company.
- 3.2 Respondent stated that Complainant's policy premium payment was in order until December 2020.
- 3.3 Respondent also stated that no premiums were received from January 2021 and April 2021.
- 3.4 Respondent stated that in May 2021, premiums for the period January 2021 to July 2021 were received through the mobile money platform, as per customer statement.
- 3.5 Complainant's policy was subjected to three months waiting period upon resumption of payments as indicated in the application form signed at inception.
- 3.6 In June 2021, Complaint lodged a claim, for payment of a funeral claim.
- 3.7 Respondent stated that June 2021, was the first month of the mandatory waiting period incurred due to late payment of the premiums.
- 3.8 Respondent also stated that the claim was repudiated because it was undergoing three months waiting period and that this was communicated to Complainant.
- 3.9 Respondent further stated that Complainant was advised of her right to appeal the repudiation decision with the Chief Operations Officer.
- 3.10 On 25 June 2021 Complainant noted an appeal with the Chief Operations Officer.
- 3.11 Respondent stated that the Chief Operations Officer upheld the repudiation decision, and the claim was not paid, nor the Complainant granted an *ex gratia*.
- 3.12 Respondent alleges that the reasons advanced by the Complainant during the appeal did not warrant the non-payment of the premiums.
- 3.13 Respondent stated further that in terms of the policy terms and conditions premiums must be paid in advance annually, quarterly or monthly.

3.14 On 28 June 2021, Respondent alleges that it was explained to Complainant that the terms and conditions stated that where premiums have not been paid for a shorter period (less than twelve months), there shall be a waiting period of three months upon settlement of all arrear premiums.

3.15 Respondent alleges that Complainant's claim was justly repudiated based on the terms and conditions of the funeral policy and a fair consideration of all circumstances.

4. **THE REPLY**

On 24 August 2021, Complainant sent her reply. However, the reply did not disclose new facts or issues and accordingly the factual matrix is adequately covered in the above captured documents. The reply merely emphasized facts already disclosed and as such are of no pertinent assistance in this determination.

5. **DETERMINATION AND REASONS THEREOF**

It is the role of the Ombudsman to determine whether or not the Respondent rightly repudiated Complainant's claim. Further, the Ombudsman's role is to determine whether the Respondent acted within the terms and conditions and acceptable practice in placing the policy on a waiting period for three months after settlement of arrears.

6. **COMMON CAUSE & CONTENTIOUS FACTS**

From a reading of the submissions, there are common cause facts and there are contentious facts. Facts about the insured having taken a policy from the insurer and that the policy was up to date until December 2020, are common and not contentious. The only contentious fact(s) are the following:

6.1. Whether the Respondent acted lawfully and in accordance with the Support Cover Plan when she repudiated Complainant's claim?

6.2. Whether the Respondent acted lawfully and in accordance with the Support Cover Plans' terms and conditions and acceptable practice in placing the policy on a waiting period for three months?

7. **THE APPLICABLE LAW**

7.1 The relationship between the parties is one of insurance. This is a regulated activity in terms of the Insurance Act, 2005. In issuing this decision, the Ombudsman will make reference to the Support Cover Plans' Terms and Conditions, Application Form read together with correspondences exchanged between the parties.

7.1.1 Insurance Contract

Insurance transactions are defined and contained in insurance agreements, also known as policies. These are documents that will define in detail the transactions and provide the details of the terms and conditions of the transactions. "The terms of a contract of insurance are embodied in a policy." (**Gordon & Gets, *The South African Law of Insurance, 2012, 134***). This is an important document as it provides all the terms and conditions, rights and duties of the parties to the insurance contract.

The Respondent in support of her defence, attached the policy schedules and the documents issued to the Complainant. It flows from these documents that the Complainant should pay premiums and that the Respondent should indemnify the risk, should the insured event occur. The Dignified Family Support Cover Plan's terms and condition provides that, "Premiums are guaranteed for twelve months and can be reviewed from time to time. Premiums must be paid monthly in advance." It was a condition of the insurance contract that premiums must be paid monthly and in advance. The Ombudsman finds that the Complainant performed in line with the terms and conditions of the insurance contract, until December 2020, where Complainant then ceased paying these premiums until May 2021. It can therefore be concluded that Complainant defaulted in her obligations in terms of the insurance contract.

7.1.2 Policy Agreement & Policy Terms and Conditions

7.1.2.1 It is settled law that insurance is a contract-based relationship. This means that the contract of insurance becomes the primary instrument of regulating the affairs of the parties. **(Prof) MFB Reinecke (2016)**, Assistant Ombudsman, Office of the Ombudsman for Long Term Insurance in his article, "**Insurable Interest in the Context of Long-Term Insurance**", states that:

"The authorities simply emphasized that a contract of insurance is a contract to transfer a risk threatening the patrimony of the insured. This implied that the insured must prove an interest upon the insured event to prove that he has in fact suffered a loss..."

7.1.2.2 Based on the above quotation, the policy document (insurance agreement) will be of critical importance when it comes to the understanding of the relationship between the parties. According to the policy, annexed in Respondent's response, the lapsing of the policy clause states as follows:

"Should the Insurance Company not receive any payment for a period of 12 consecutive months, the relevant policy will be cancelled. However, if premiums are not received for a shorter period, there shall be a waiting period of three months following the settlement of the arrear premiums." (Emphasis made.)

7.1.2.3 It is not in dispute that Complainant missed premiums for the months of January 2021 until April 2021 and then paid these outstanding premiums in the month of May 2021. By not paying the premiums of these months, the "lapsing of the policy clause" was triggered and the policy was then placed on the waiting period. In terms of the insurance contract a default in the premiums then lapses the policy and on correction of the default the policy is placed on a waiting period. Respondent applied this clause in placing the policy on a waiting

period. It was unfortunate that the insured event took place during a time when the policy was placed on the waiting period due to Complainant's failure to pay premiums.

FINDING

8. The Ombudsman finds that the Respondent acted in line with the Support Cover Plan's terms and conditions, in repudiating or declining Complainant's claim, in that the Complainant failed to pay premiums for a shorter period, being four months and the policy was subjected to a waiting period, when the death occurred.
9. The Ombudsman further finds that the Respondent acted in line with the terms and conditions of the family support plan by placing the policy on three months waiting period following Complainant's failure to pay premiums between the period January 2021 until May 2021.

THE ORDER

10. The complaint is not upheld.
11. There is no order made to the Respondent.

THUS, DONE AT MBABANE AND CERTIFIED A TRUE AND CORRECT DETERMINATION OF THE OMBUDSMAN OF FINANCIAL SERVICES IN TERMS OF SECTION 75(5) OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT OF 2010.

THE OMBUDSMAN OF FINANCIAL SERVICES