

Ombud: Cultural nuances play a role in insurance disputes

Given South Africa's melting pot of cultures, insurance companies need to take nuances, particularly with language, into account when considering a disputed insurance pay outs, says long-term insurance ombudsman, Judge Ron McLaren.



Judge Ron McLaren, Judge ombudsman for long-term insurance

The case

In a matter where Sanlam declined a funeral claim as the life covered was a second cousin and did not meet the definition of “cousin” in terms of the policy, McLaren said in certain cultures, the term includes second cousins as there is no word for that relationship in some languages and such a person is included in the term “cousin”.

The policy, a Solutions Funeral Essential Plan, commenced with effect from 1 December 2011. The complainant submitted a funeral claim for a wider family member who passed away on 17 April 2015. The cover at the time of death amounted to R17,250.

The deceased was insured as the complainant’s cousin. “Cousin” is defined in the policy as: “Cousin who is the child of the policyholder’s aunt or uncle.”

At the time of claiming against the policy, it was established that the deceased was in fact the complainant’s second cousin

by virtue of the fact that the complainant and the deceased's grandmothers were sisters.

Sanlam declined the claim and relied on the definition of "cousin" as contained in the policy and the fact that the onus was on the complainant to familiarise herself with such definitions. The insurance company refunded the premiums contributed in respect of the deceased.

The complainant alleged that at application stage, the broker was aware that the deceased was her second cousin and averred that the broker had advised her that the deceased could be covered as a cousin.

The complainant claimed she had contributed towards and borrowed money from a relative for the funeral.

Provisional determination

The matter was discussed at a meeting of adjudicators on 3 December 2015 under the chairmanship of McLaren, and a provisional determination was made on the basis that while contractually Sanlam may decline the claim, the complainant had assisted financially with the funeral and the term "cousin" included second cousins in certain cultures.

It was provisionally determined that policyholders would not necessarily check a definition of a common usage term such as "cousin" before insuring a life.

"The expectation of a reasonable, honest man or policyholder in the same circumstances would be that a person thought of as a cousin, but whose actual relationship was that of second cousin, would be covered in terms of the policy," the adjudicators said.

The meeting agreed that in terms of fairness, the claim should be reconsidered and paid.

Argument against determination

Sanlam disputed the provisional determination. It argued that:

- The application form was designed in such a way that it was inserted inside the terms and conditions of the policy.
- That at sales stage, the complainant had been given the terms and conditions of the policy.
- That the terms and conditions clearly stated what Sanlam considered a cousin to be.
- That whilst they agreed that in certain cultures a second cousin may be a cousin, this was not the case with Sanlam and hence the reason why the definition of cousin had been defined in the terms and conditions.
- That consensus existed between the complainant and Sanlam.
- That the complainant, at application stage, had declared that the information provided by her was true and complete and that she had acknowledged receipt of the policy document.
- That the complainant had, by way of the compliance check list, confirmed that the broker had disclosed the type, extent and limitation of the benefits.
- That Sanlam was committed to treating its customers fairly and for that reason, was unable to ignore its policy terms and conditions.

Dispute settlement

The matter was again discussed at a meeting of adjudicators on 11 March 2016. The meeting agreed to refer to the matter to the Financial Advisory and Intermediary Services (Fais) ombud to investigate the advice given at sales stage. However, the Fais ombud dismissed the matter.

An attempt to resolve the matter telephonically with the insurer was made on 1 August 2017 during which the insurer maintained that whilst research and trends, towards the end of 2015, early 2016, had identified the need to expand the definitions of wider family, this did not extend to second cousins, as in terms of insurable interest, the basis on which

Sanlam determined which lives could be insured, the interest/relationship was too remote.

The insurer confirmed that the training provided to agents and brokers had been enhanced and a family tree had been devised to assist with the explanation and classification of family relationships.

Nonetheless, the insurer's stance on the payment of the claim remained unchanged.

The matter was again discussed at a meeting of adjudicators on 25 August 2017 and the provisional determination was unanimously upheld.

In addition to other aggravating factors, the meeting concluded that the fact that research and trends at the end of 2015, early 2016, showed a need for the definitions to be extended together with enhanced training and training aids, an inference could be drawn that since the complainant's policy was sold in 2011, it was likely that at that time the training had been inadequate and, therefore, the sale would have been done without the necessary guidance regarding relationships.

Based on this point, the complainant's version of events, when balanced against that provided by the insurer, was more probable.

The adjudicators held that in terms of fairness and equity, the claim should be paid.

Equity jurisdiction

The rules of the ombud provide that where a claim cannot be upheld in law, it may exercise equity jurisdiction. In such a case, the prejudice to the insurer is taken into account and weighed against the prejudice suffered by the complainant to decide if an equity decision is justified.

"A common misconception is that treating every policyholder exactly the same means that the insurer is acting fairly. Equity has to take account the individual circumstances of a particular policyholder or complainant," said Judge McLaren.

In a final determination, he ordered Sanlam to pay the claim of R17,250.

Sanlam paid the claim, less the premiums already refunded.

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